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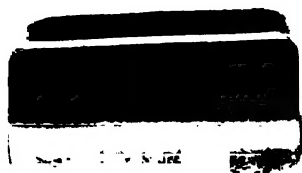
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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XXV

**DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES**

OCTOBER, 1912, TO JANUARY, 1913

**WITH TABLE OF CASES CITED IN
VOLUMES XII TO XXV**

REPORTED BY THE COMMISSION



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WASHINGTON

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INTERSTATE COMMERCE COMMISSION.

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JOHN H. MARBLE, Secretary.

25 I. C. C.

XXV

INTERSTATE COMMERCE COMMISSION REPORTS.

No. 4819.

F. E. MOORE

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted September 5, 1912. Decided October 8, 1912.

Rates of \$2.23 and \$2.24½ for the transportation of furniture in carloads from Burlington, Iowa, to Hotchkiss, Colo., not found to have been unreasonable or unduly discriminatory. Complaint dismissed.

C. W. Durbin for complainant.

E. N. Clark for Denver & Rio Grande Railroad Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, F. E. Moore, doing business under the name of the Independent Furniture Company, is engaged in the furniture business at Hotchkiss, Colo. By petition, filed April 16, 1912, he alleges that he was charged by defendants an unreasonable and unjustly discriminatory rate for transportation of four carloads of furniture from Burlington, Iowa, to Hotchkiss. Reparation is asked.

The complaint sets forth shipments as moving in four cars, but the destination expense bills submitted cover only three shipments from Burlington to Hotchkiss, as follows:

Date of expense bills.	Pro. No.	Car No.	Weight.	Rate	Freight charges collected.
April 30, 1910.....	804	C. B. & Q. 98008	Pounds. 11,200	\$2.24½	\$251.44
February 6, 1911.....	90	C. B. & Q. 43033	13,600	2.23	303.20
July 16, 1911.....	183	L.S. & M.S. 57774	12,000	2.23	267.08
Do.....	182	L.S. & M.S. 57774	(1)	(1)	.....
					\$22.32

¹ Weight and charges on waybill 1297 (Pro. 183), July 6, 1911.

There were no joint rates applicable from and to the points involved, and through rates were constructed upon the basis of the rates to Colorado common points plus the rates beyond. Burlington,

Iowa takes the Mississippi River-rate basis. At the time of shipment, the western classification, to which the tariffs were subject, provided third-class rating on furniture in carloads, minimum weight 12,000 pounds, subject to rule 6-B. The tariffs of defendants naming the rate from Burlington to Colorado common points, including Pueblo, however, provided a commodity rate of \$1.02½ on "furniture, classified third class in western classification, minimum weight 20,000 pounds, except where classification makes less, in which case the classification will govern." Both the class rate and the commodity rate up to Colorado common points were subject to rule 6-B of the western classification which provides that minimum weights will apply on all sizes of cars, except that premium and deduction charges will be applied to light and bulky freight. There was no commodity rate from Colorado common points and the lowest through rate was made by use of the third-class rate of \$1.22 from Pueblo based upon a minimum weight of 12,000 pounds, subject to the Denver & Rio Grande Railroad's exceptions to the classification which relieved furniture in carloads from the application of rule 6-B on traffic from Pueblo to Hotchkiss.

The shipment of April 30, 1910, was charged for on basis of 11,200 pounds at the through rate of \$2.24½, made up of the factors above stated. The official railway equipment register, however, shows that C. B. & Q. car No. 96003 was a box car 40 feet 5½ inches in length and under the application of rule 6-B the minimum weight on a carload of furniture loaded therein would for the transportation up to Denver have been 13,440 pounds. West of Pueblo the minimum would have been 12,000 pounds. Applying the rates above quoted, subject to the varying minima, we compute the charges which should have been collected on this shipment as follows:

	Minimum weight.	Rate.	Charges.
Burlington to Pueblo.....	Pounds. 12,440	\$1.02½	\$137.76
Pueblo to Hotchkiss.....	12,000	1.22	146.40
Total.....			284.16

There is, therefore, an apparent undercharge of \$32.72* on the shipment.

Effective December 21, 1910, the commodity rate on furniture from Burlington to Colorado common points, including Pueblo, was reduced to \$1.01, the minima and rules governing remaining unchanged. The shipment of February 6, 1911, appears to have been correctly charged.

Also, effective February 16, 1911, the Denver & Rio Grande filed a new tariff, which was a reissue of the class rates formerly in effect from Pueblo, including the rate of \$1.22 to Hotchkiss. The new

issue contained, however, in addition to the established class rates a distance scale, together with an alternative rule providing that if distance rates made a lower charge on any shipment than the specific rates shown therein, such lower charge would apply. The distance from Pueblo to Hotchkiss is 278.7 miles, and the third-class rate named in the tariff for a distance of 279 miles is \$1.10 per 100 pounds. The shipment covered by the expense bill dated July 10, 1911, was charged at a through rate of \$2.23. Under the application of this rule, however, the \$1.10 rate should apparently have been applied from Pueblo, and the through rate as thus constructed would have been \$2.11.

It will be observed that the expense bill shows car "L. S. & M. S. No. 67774." This is a 36-foot car and the minimum of 12,000 pounds would be applicable to the through transportation from Burlington to Hotchkiss. The memorandum bill, however, shows the same car number. If this be correct there is no apparent reason for the memorandum bill. If, on the other hand, the memorandum bill erroneously shows the same car number as the bill covering the charges, and in fact does cover a part or balance lot, the charges on such part or balance lot should have been assessed in accordance with the rules of the classification. Upon the facts we can make no definite finding with respect to the correctness of the charges, but the defendants should at once investigate the circumstances and make the proper adjustment.

The essence of the complaint in this case is that the rates charged are unreasonable and also unduly discriminatory as compared with the third-class rate of \$1.63 applicable on furniture from Mississippi River points to Salt Lake City, Utah. The latter rate became effective November 15, 1911. Hotchkiss, the point of destination involved, is a local station on a branch of the Denver & Rio Grande, extending from Delta, Colo., to Somerset, Colo. It is not intermediate to Salt Lake City, nor is it intermediate to Grand Junction, Colo., to which point the Commission in its decision upon *Fourth Section Application No. 960*, 23 I. C. C., 115, denied the application of the Denver & Rio Grande and Colorado Midland railway companies to charge higher rates at intermediate points than are contemporaneously in effect to Salt Lake City.

The only evidence submitted by complainant in support of its contention consisted of a comparison of distances which it submitted, as follows:

From Burlington to—	Miles.	Route.
Salt Lake City	1,313	C. B. & Q. and Union Pacific.
Do.	1,570	C. B. & Q. and D. & R. G.
Hotchkiss	1,354	Do. ¹
Do.	1,225	Do. ²

¹ Via Grand Junction, standard gauge all the way
25 I. C. C.

² Via Marshall Pass route, narrow gauge part way.

Hotchkiss is 76 miles farther than Grand Junction via that route. Complainant specifically contends that it is unreasonable *per se* to charge more for hauling a car to Hotchkiss, only 76 miles beyond Grand Junction, than is charged for the haul to Salt Lake City.

Defendants deny that the rates challenged are in anywise unreasonable or unduly discriminatory. It is pointed out that while shipments to Hotchkiss ordinarily move through Grand Junction, they are not necessarily so forwarded. They could, as the testimony shows, depart from the main line of the Denver & Rio Grande at Salida, Colo., and move thence over the Marshall Pass narrow-gauge route, a slightly shorter distance, but such a movement would involve a transfer from standard-gauge to narrow-gauge equipment at Salida. Passing over Marshall Pass at an elevation exceeding 10,000 feet, and dropping down into the Gunnison Valley, another transfer to standard-gauge equipment at Montrose, Colo., would be necessary in order to complete the transportation to destination. In order, the defendants assert, to save the expense of these transfers and the extraordinary altitudes via that route, it has been found advisable to transport the cars via Grand Junction over the broad-gauge route, although the latter does involve a back haul over two branch lines. The physical difficulties of operation over part of the route traversed by the shipments involved have been considered in prior cases brought before this Commission, some of which are referred to in the record of the instant case.

Upon all the facts of record in this case, and taking into consideration the information to be drawn from the record of other cases bearing upon the transportation conditions, we can not find that, under the circumstances and conditions then obtaining, the rates charged on complainant's shipments were unjust or unduly discriminatory. As pointed out, there were no joint rates at times of shipment, and through rates from Mississippi River points to Hotchkiss were made on a combination of the rates up to Colorado common points, plus defendants' local rates thence to destination. It now results from the decision in *Fourth Section Application, No. 960, supra*, that complainant will have a somewhat lower basis of rates for the future based on the combination over Grand Junction. We do not believe that substantial justice calls for reparation upon the basis of the lower rates which, since this petition was filed, have become applicable via Grand Junction; and the complaint will therefore be dismissed. An order will be entered accordingly.

25 I. C. C.

No. 4839.
EAGLE PASS LUMBER COMPANY
v.
NATIONAL RAILWAYS OF MEXICO ET AL.

Submitted August 23, 1912. Decided October 8, 1912.

Upon complaint alleging that unjust and unreasonable charges were assessed upon carload shipments of hay moving from Eagle Pass, Tex., to points in Mexico; *Held*, That the responsibility for the matters complained of does not rest upon the American carrier participating in the transportation, and as the Mexican carrier operates entirely in a foreign country and is not subject to the jurisdiction of the act to regulate commerce, no relief can be granted. Complaint dismissed.

Ben V. King for complainant.

J. R. Christian for Galveston, Harrisburg & San Antonio Railway Company and Houston & Texas Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the business of buying and selling lumber and other material and has its principal place of business at Eagle Pass, Tex. By petition, filed December 5, 1911, it alleges that on various dates in the year 1910 it made carload shipments of hay from Eagle Pass, Tex., to points in the state of Coahuila, Republic of Mexico, upon each of which charges were assessed on basis of a minimum weight of 10,000 kilos (22,046 pounds) per car; that the cars furnished by defendants were of insufficient size to carry the stated minimum; that the practices and regulations of defendants governing the minimum tonnage charges are unjust and unreasonable; and that by reason thereof it was compelled to pay exorbitant, unjust, and unreasonable charges, for which reparation is asked.

No answer to the petition was made by the defendant, National Railways of Mexico (hereinafter called the Mexican road), nor was any appearance made in its behalf at the hearing.

The material facts of this case, briefly stated, are as follows: Eagle Pass, Tex., is situated on the Rio Grande River, directly across from the Mexican town of Piedras Negras, with which it is connected by a bridge over the river, in the middle of which, or on the international boundary line, the rails of the defendant carriers connect. The

complainant has a plant and yards at Eagle Pass, Tex., adjacent to the tracks of the Galveston, Harrisburg & San Antonio Railway Company (hereinafter referred to as the American road), with which it is connected by a siding or spur track and which carrier is its only rail connection.

Complainant, in the course of its business, buys hay at interior Texas points and ships same to Eagle Pass, where it stores the hay in its warehouse for future sale and shipment. For the shipment of hay into Eagle Pass complainant has no difficulty in getting from the American road equipment of sufficient capacity to carry the minimum tonnage prescribed by the tariffs to that point. On outbound shipments to destinations other than in Mexico it likewise experiences no trouble in getting cars of sufficient size; but complainant frequently makes shipments into Mexico and in such cases invariably has to accept cars of insufficient size to contain the minimum weight upon which charges are assessed by the Mexican road.

When complainant has a shipment for Mexico it is its custom to place an order for the car or cars over the phone with the local agent of the American road at Eagle Pass and at the same time to notify the agent of the Mexican road at Piedras Negras, on the Mexican side of the Rio Grande.

The custom seems to indicate an arrangement or tacit understanding that the Mexican lines will furnish the cars. The American road does not ordinarily permit complainant to use its cars for shipments into Mexico, and while complainant testifies that he usually gets 36-foot cars, the largest, he understands, that the Mexican road has, they are nevertheless of insufficient capacity to contain the minimum tonnage. Complainant asserts that shippers at interior points in Texas having shipments for Mexico are furnished with larger cars and that to that extent the circumstances work a prejudice against it.

The American road does not publish nor does it participate in any tariff naming joint through class rates or a joint commodity rate on hay from Eagle Pass to Mexican destinations. The American road's only part in the transportation, so far as the record shows, consists in receiving the cars from the Mexican road, moving them to the complainant's plant, and when loaded moving them out to the point of interchange with the Mexican road. To cover the movement it issues a transfer bill to the Mexican road, upon which no charges are entered. For the service performed it receives a switching charge of \$1.50 per car, which is advanced to it by the Mexican road and which is covered by a tariff filed with the Commission. In the sense that it issues bills of lading showing Mexican destination and secures or supplies the cars for the shipments the American road admits that it accepts shipments for Mexico. The Mexican road files no tariffs with the Commission and does not

hold itself amenable to the act to regulate commerce. There was some testimony to the effect that it has a tariff naming rates on hay from Eagle Pass to points in Mexico. However, no such tariff is on file with this Commission, and the witness for the American road testified that it did not join in any such tariff nor participate in transportation thereunder.

The facts and circumstances attending the movement of complainant's shipments clearly present a case of interstate transportation participated in by two unrelated carriers, one of whom, operating in the United States, is subject to the provisions of the act to regulate commerce, while the other, operating exclusively beyond the confines of this country, is therefore beyond the jurisdiction of its laws.

Where, as in this case, there is no joint tariff under which the carriers operate in interstate commerce the through rate and charges for the transportation must necessarily be made up of the separately established rates and charges. The law requires of carriers subject to its jurisdiction that they publish and file such separately established charges, and this was done in this instance by the American road. While it accepted shipments and issued through bills of lading for transportation into Mexico, that transportation, so far as it was concerned, consisted of a switching movement only, the charge for which was fixed and arbitrary and bore no relation whatever to the dimensions or capacity of the car switched. The tariff of the American road showing its separately established charges and governing the switching of cars destined to Mexico contained none of the rules or regulations which give rise to this complaint.

The practical question here is as to the duty or liability of the American carrier to furnish cars of sufficient capacity to contain the minimum weight upon which the Mexican road apparently assessed its charges. We think there was, under the circumstances of this case, no duty or obligation upon the American carrier to furnish complainant with its own cars for the shipments in question. Certainly there was no duty imposed upon the American road by any tariff, since its own did not obligate itself to furnish such equipment and it did not concur or participate in the Mexican road's tariff. No relief can be granted complainant under the act to regulate commerce. It follows, therefore, that the complaint must be dismissed, and an order will be entered accordingly.

No. 4150.

MIXON-McCLINTOCK COMPANY

v.

**ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.**

Submitted October 11, 1911. Decided October 7, 1912.

The charges for the transportation of a carload of mules from Springfield, Mo., to Marianna, Ark., found to have been unjust and unreasonable. Reparation awarded.

G. M. Stephen for complainant.

B. M. Flippin for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in buying and selling cotton and general merchandise at Marianna, Ark. In its petition, filed June 5, 1911, it alleges that it was charged an unreasonable and unduly discriminatory rate for the transportation of a carload of mules from Springfield, Mo., to Marianna, Ark., via Nettleton, Ark. Reparation is asked.

On February 6, 1911, complainant received at Marianna one carload of mules weighing 23,200 pounds. The shipment moved from Springfield to Nettleton, Ark., over the St. Louis & San Francisco Railroad, and thence to Marianna via the St. Louis, Iron Mountain & Southern Railway. Transportation charges were collected in the sum of \$105.06, based upon a rate of \$51.70 for a 36-foot car from Springfield to Nettleton and 23 cents per 100 pounds thence to Marianna. No complaint is made as to the charge from Springfield to Nettleton.

The record fails to disclose how the shipment was billed. Apparently complainant did not pay the charges up to Nettleton, there take possession of the car, and make a new shipment from that point, as the expense bill purports to cover charges into as well as from Nettleton. Consequently the entire movement must be regarded as interstate in character.

At the time this shipment moved defendant St. Louis, Iron Mountain & Southern Railway published a rate of \$28 per car of 36 feet, with a graduated increase for cars of larger dimensions, between Net-

Nettleton and Marianna, but this rate was restricted to traffic moving between points within the state of Arkansas. Effective December 19, 1910, the St. Louis, Iron Mountain & Southern published, and still maintains, a tariff naming a rate of 23 cents per 100 pounds, minimum weight 25,300 pounds, for cars over 36 feet and not over 40 feet in length, on traffic between the same points. This tariff on its title-page contains the following note:

Rates named herein apply only on traffic originating at or destined to points outside of the state of Arkansas, or traffic that may be received from or delivered to connecting lines in Arkansas, which have interstate destination or origin.

The rates named in this tariff are not limited to traffic originating on the lines of the St. Louis, Iron Mountain & Southern outside the state of Arkansas, and the rate of 23 cents under this tariff from Nettleton to Marianna was correctly assessed.

Defendant St. Louis & San Francisco Railroad in its answer avers, and complainant admits, that the car in which the shipment moved was 39 feet 9½ inches in length. Under the tariff lawfully applicable the charges from Springfield to Nettleton should have been 116 per cent of \$47, the rate on cars not exceeding 30 feet 6 inches, instead of 110 per cent of said rate applicable to cars of 36 feet in length, and from Nettleton to Marianna charges should have been based on a minimum weight of 25,300 pounds. There is, therefore, an undercharge of \$7.65 on this shipment.

While complainant's claim is based upon a misapprehension of the tariffs, the petition alleges that the rate assessed for the movement from Nettleton to Marianna is unreasonable, and a comparison is made of the rate complained of with the rate from Springfield to Nettleton and with other rates.

The distance from Nettleton to Marianna is 75 miles, and at the rate of 23 cents per 100 pounds the revenue per ton per mile is 6.13 cents. For a car of the size containing complainant's shipment the charges between Nettleton and Marianna are \$58.19, while for the same size car from Springfield to Nettleton, a distance of 222 miles, the charges are only \$54.52. From St. Louis, Mo., to Memphis, a distance of 330 miles, the charges per car, regardless of length, are \$50, and from St. Louis to Helena, Ark., a distance of 338 miles, the charges per car of the size in question are \$60. At a rate of 12 cents per 100 pounds from Nettleton to Marianna this traffic would yield a per-ton-per-mile revenue of 3.2 cents.

From an examination of all the facts we are of opinion and find that the rate on this traffic from Nettleton to Marianna, when such traffic originates outside the state of Arkansas, should not exceed 12 cents per 100 pounds, with a minimum weight of 25,300 pounds. We further find that complainant made the shipment in accordance with

the foregoing statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable, and it is therefore entitled to an award of reparation against the St. Louis, Iron Mountain & Southern Railway in the sum of \$23, with interest from February 6, 1911. The latter company is hereby authorized to waive collection of the undercharge on the movement from Nettleton to Marianna. There is, however, an undercharge still outstanding due the St. Louis & San Francisco Railroad Company, amounting to \$2.82, on the movement from Springfield to Nettleton. An order will be entered in accordance with the findings herein announced.

25 I. C. C.

No. 4401.
WILSON BROTHERS
v.
**DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.**

Submitted February 13, 1912. Decided October 7, 1912.

Complainant leased from defendant a warehouse with platform extending to a terminal delivery track that serves complainant and other shippers and receivers. Defendant's tariff provided that track-storage charges should apply "upon carload freight for delivery from cars direct to drays." Complainant's freight is delivered upon a platform of the leased warehouse and not to drays; *Held*, That the assessment of track-storage charges against complainant under the circumstances was not in accordance with the published tariff, and was therefore illegal. Reparation awarded.

H. L. Davis for complainant.

Douglas Swift for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a copartnership, trading under the firm name of Wilson Brothers, engaged in the produce business in South Brooklyn, N. Y. Its petition, filed September 8, 1911, alleges that track-storage charges were assessed against it without lawful tariff authority therefor, and that by reason thereof it was compelled to pay unjust and unreasonable charges. Reparation is asked.

There is a stipulation filed of record, duly signed by the parties to the proceeding, and the facts contained therein are substantially as follows:

Complainant conducts a produce business in a warehouse leased from the defendant, which warehouse adjoins defendant's tracks at its Twenty-fifth street terminal, Brooklyn, N. Y. A platform extends from said warehouse to the defendant's adjoining delivery track, which serves other shippers, as well as complainant, at their respective places of business, and connects with a general freight depot of the defendant and a public team track. The said terminal delivery track belongs wholly to the defendant, and is not included in nor affected by the lease of the warehouse. Cars consigned to complainant are unloaded upon said platform, and there is sufficient space alongside for two cars. The physical conditions at this

terminal are such that when complainant's cars have been placed the track space occupied thereby is accessible to no one other than complainant for loading or unloading, while at the other points beyond complainant's platform cars may be set for purposes of general loading and unloading. Each time that cars are moved to and from that portion of the track extending beyond complainant's platform it is necessary for the defendant to switch complainant's cars out of the way and to return them that the unloading may be completed. Track-storage charges were assessed and collected under the tariff hereinafter mentioned upon all cars, except those containing coal and coke, placed for unloading on any track at said terminal when detained beyond a specified period. The stipulation sets out that between November 1, 1909, and June 1, 1911, track-storage charges were assessed and collected from complainant in the sum of \$398 upon interstate shipments of produce unloaded upon complainant's platform under a provision in said tariff reading as follows:

83. The following schedule of track-storage charges will apply in addition to the regular car-service or demurrage charges upon carload freight (except coal and coke) for delivery from cars direct to drays at the following stations:

Then follows a list of stations, including the one in question, and the amount of the charges to be assessed, depending upon the period of detention.

Complainant contends that the provision in the tariff applies only in those instances where delivery is made *direct to drays*, and that no track-storage charges should accrue where delivery is made upon the platform.

Defendant argues in its brief that the section of the track upon which complainant's cars were placed and held for unloading was in its nature a public-delivery track and not a private track of complainant; that the fact that complainant's use of said section of the track adjacent to their warehouse for unloading did not and could not deprive any other shipper or consignee of the use of it is not material. Defendant further states that the unloading of complainant's cars directly onto the warehouse platform instead of onto drays did not exempt them from track-storage charges under the tariff, in that the tariff does not say that the charge applies to carload freight which is or has been or shall be unloaded from car or dray, but that it provides for delivery from car to dray; that is, on carload freight which is of a character that may be or customarily is delivered from car to dray. It further urges that the lease of complainant's warehouse from defendant did not include the use of the track in question free of track-storage charges.

Since the filing of the petition in this case the defendant has amended its tariff by striking out the words "direct to drays," so that the tariff now reads "for delivery from cars at stations."

Upon consideration of all the facts and circumstances appearing of record, and upon examination of the tariff under which the charges complained of were assessed, we are of the opinion, and so find, that the delivery made to complainant was not made "direct to dray" and therefore does not come within the plain wording of the tariff, and that therefore the track-storage charges were illegally assessed.

We further find that in so far as complainant was compelled to pay the charges herein found to have been illegally assessed it was damaged thereby and is entitled to an award of reparation. Upon the filing of an agreed statement of the shipments upon which track-storage charges were paid, and agreement by defendant that it is correct, and a verification of said statement by the Commission, an order of reparation will be entered.

25 I. C. C.

No. 3592.
MARIAN COAL COMPANY
v.
**DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.**

Decided October 19, 1912.

Defendant's rate per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J., f. o. b. vessel, of \$1.13 on rice and smaller sizes found excessive and unreasonable to the extent that exceeds 98 cents per long ton.

H. C. Reynolds for complainant.

W. S. Jenney and *J. L. Seager* for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, Commissioner:

The original report in this case, 24 I. C. C., 140, found that the rates of defendant per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J., f. o. b. vessel, of \$1.58 on prepared sizes, \$1.43 on pea, and \$1.28 on buckwheat, were excessive and unreasonable in and to the extent that they exceeded \$1.33 on prepared sizes, \$1.24 on pea, and \$1.09 on buckwheat, and that for the future the latter rates must not be exceeded for such movement. No finding was made as to the rate on the smaller sizes, barley, and rice, although the complaint also put such sizes in issue.

The complainant has applied for a modification of our order, requesting that we reduce defendant's rate of \$1.13 per long ton on rice and smaller from Taylor, Pa., to tidewater, f. o. b. vessel, Hoboken, N. J., to a degree proportionate to the reduction on the larger sizes. We are asked to establish rates on rice, barley, and culm. The original petition does not involve culm and no testimony covering it was submitted; therefore we can not in this proceeding consider the matter of a specific rate on that grade of coal.

It appears, however, from further investigation that our original findings should be supplemented so as to include a rate on rice and barley. The record shows that the complainant sought the establishment of a rate on these sizes and introduced evidence in support thereof. Our former report embraced a consideration of defendant's

rate of \$1.13 on rice and smaller (which would apply on rice and barley) and showed that such rate per ton-mile for the distance of 147.8 miles from Taylor to Hoboken amounts to 7.6 mills; also that on basis of the rate sought by complainant the ton-mile revenue would be 5 mills. We further pointed out that the ton-mile earnings on the rate of \$1.13 approximate 7.2 mills, when we accept defendant's claim of 155 miles as the average distance to tidewater from all the collieries and washeries reached by its line.

A large part of the shipments involved in the original claim for reparation consisted of rice and barley and the complainant asserts that it still has a considerable tonnage of these sizes to ship. In our former report we found that the rate on buckwheat should not exceed \$1.09, and it is apparent that our failure to fix a rate on rice and barley, which are in size and value less than buckwheat, would leave in force the rate of \$1.13 on such smaller sizes, or a rate 4 cents greater than the rate fixed by us on the next larger size.

We based our conclusions with respect to the rates on prepared sizes, pea and buckwheat, upon the evidence of record and the facts adduced from our examination and analysis of the annual reports filed by defendant in their relation to the rates on coal. We think such evidence and facts apply with equal force to the rate on rice and smaller and in consideration thereof it is our judgment and determination that defendant's rate per long ton on anthracite coal in carloads from Taylor, Pa., to Hoboken, N. J., or New York Lighterage station, N. J., f. o. b. vessel, of \$1.13 on rice and smaller is excessive and unreasonable to the extent that it exceeds 98 cents per long ton and that for the future the latter rate must not be exceeded for such movement. An order will be issued in accordance with these conclusions.

We further find that the application of defendant's rate of \$1.13 per long ton upon such of complainant's shipments of rice and smaller sizes embraced in its claim as were delivered within the statutory period of two years prior to the date of filing the complaint, damaged complainant to the extent of the difference between the amount which it did pay on such shipments and the amount which it would have paid at the rate of 98 cents per long ton herein found reasonable, and that it is entitled to reparation in the sum of such difference. An order awarding reparation will be issued following the receipt and approval by the Commission of an itemized statement agreed to by the complainant and defendant, which shall show the amount due the complainant under our findings herein.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 120.
IN THE MATTER OF HOP RATES.

Submitted October 2, 1912. Decided October 14, 1912.

The carriers have in this proceeding fairly sustained the burden of satisfying the Commission that \$1.75 per 100 pounds in carloads, with a minimum of 15,000 pounds, and \$2.25 per 100 pounds in less than carloads, as blanket rates for the transportation of hops from points of production in Washington and Oregon to destinations upon the Missouri River and east, are reasonable. Order of suspension vacated.

Ehrich & Wheeler for S. & F. Uhlmann, T. Rosenwald & Company, and others, protestants.

W. F. Herrin, J. B. Baird, N. H. Loomis, W. W. Cotton, P. L. Williams, J. D. Armstrong, H. A. Scandrett, and J. G. Wilson for Union Pacific Railroad Company, Southern Pacific Company, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, Northern Pacific Railway Company, and Great Northern Railway Company.

E. B. Boyd for Western Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The advances involved in this proceeding are upon hops from points of production in the states of Washington and Oregon to various points of consumption on and east of the Missouri River. The former rates were \$1.50 per 100 pounds in carloads and \$2 per 100 pounds in less than carloads, and both these rates are increased 25 cents per 100 pounds by the tariff under suspension.

The hop production of the United States is mainly upon the Pacific coast. It was said that the entire production in this country is about 240,000 bales annually, of which all but about 35,000 bales is grown in the three Pacific coast states, of which Oregon is much the largest producer.

In ordinary seasons about one-third of this production is exported, the balance being consumed for the most part in territory east of the Missouri River. The testimony did not show definitely how this consumption was distributed between the middle west and the Atlantic seaboard.

The rates are blanketed from all points of origin to all destination points upon the Missouri River and east.

Hops are compressed for shipment in bales weighing from 185 to 200 pounds each, and with a density of about 10 pounds to the cubic foot. Shippers of hops, who protested against the advances and were represented upon the hearing, testified that this density as a practical matter could not be increased and that the minimum ought not to exceed 15,000 pounds for a standard car 36 feet in length.

The value of hops varies greatly from season to season, having fluctuated during the last eight years from 8 cents to 45 cents per pound. The average for that period would be about 15 cents per pound.

The carriers justify the advances upon the ground that the former rates were too low in proportion to the cost of the service, and in support of this contention they rely largely upon the decision of this Commission by which rates for the transportation of wool were recently established.

Wool in sacks loads somewhat heavier than hops. The minimum fixed by the Commission for a standard car 36 feet in length was 24,000 pounds, as compared with 15,000 pounds of hops.

The value of the wool per pound is somewhat, although not much, greater than that of hops. The liability to damage is fully as great with the hops as with wool. If these elements are to determine the rate of transportation, it can be urged with great force that hops should pay as high a transportation charge as wool.

The wool rates established by the Commission were graded rates, that is to say, they increased with the distance covered. The hop rate applies over a considerable area at the producing end and embraces territory nearly 1,500 miles wide upon the consuming end. It is therefore impossible to exactly compare the rate which we fixed in case of wool with that which the carriers have established for hops. Assuming that the haul of the hops is on the average 2,500 miles, a rate of \$1.75 per 100 pounds would be approximately equivalent to the rate which we established for the carriage of wool.

The protestants compared this rate with that upon other products from the Pacific coast, showing that in some instances the business at the old rate of \$1.50 in carloads would be as profitable as other California products at the current rate.

The Commission has approved, after very much consideration, a blanket rate covering approximately the same destination territory and involving approximately the same haul as does the hop rate of \$1.15 per 100 pounds for the movement of oranges.

The minimum loading of oranges is approximately 26,000 pounds, yielding at a rate of \$1.15 per 100 pounds about \$300 per car earnings. Hops at a minimum of 15,000 pounds and a rate of \$1.50 would yield \$225 car earnings.

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Oranges are moved in refrigerator cars 40 feet in length which are considerably heavier than the ordinary box cars in which hops are transported. Since the refrigerator car is not adapted to general merchandise traffic those used in the movement of citrus fruits from California are to a considerable extent returned empty.

If the cost of service alone is to be considered it seems quite probable that \$1.50 per 100 pounds for the movement of hops would afford as good business as the rate approved by the Commission for the transportation of oranges. But, upon the other hand, hops are of greater value than oranges, afford a much less volume of traffic, and will probably bear a slightly higher rate.

Going back to 1890 we find a rate on hops of \$2.20 in any quantity. This rate was maintained with some fluctuations until 1900, when a rate of \$1.50, any quantity, was established. In 1906 this was reduced to \$1.50 in carloads and \$2 in less than carloads, with a carload minimum of 20,000 pounds. The carload minimum was reduced in 1907 to 15,000 pounds, but otherwise the rates continued in effect until the filing of the suspended tariff.

Ordinarily rates from California and from the northwest upon this commodity have been the same. It appears, however, that California lines advanced their rate from \$1.50 c. l. and \$2 l. c. l. to \$1.75 and \$2.25, respectively, at about the time when the tariff under suspension was filed. For some reason the California tariff was overlooked by the shippers, who filed their protest against this schedule and was therefore not suspended, but is now in effect. It was stated that shippers from California were satisfied with the present rates, provided the same schedule was allowed to take effect from the northwest.

While the question is by no means a clear one, we are, on the whole, of the opinion that \$1.75 in carloads, with a minimum of 15,000 pounds and \$2.25 in less than carloads, as blanket rates from points of production in Washington and Oregon to destinations upon the Missouri River and east are reasonable for the transportation of hops, and that the carriers have in this proceeding fairly sustained the burden of satisfying us to that effect. The order of suspension will be vacated.

25 I. C. C.

No. 3711.

E. I. DUPONT DE NEMOURS POWDER COMPANY

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

Submitted August 20, 1911. Decided October 7, 1912.

Double first-class rate for the transportation of dynamite from Knoxville to Copperhill, Tenn., on shipments originating outside of the state found to have been unreasonable in so far as it exceeds the first class rate. Reparation denied.

Thomas J. Laffey and J. P. Laffey for complainant.

William L. Kinter for Philadelphia & Reading Railway Company.

William A. Northcutt for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the manufacture and sale of dynamite in New Jersey and other states. In its petitions, filed December 13 and 14, 1910, it alleges that unreasonable rates were charged for the transportation of dynamite in carloads from Knoxville to Copperhill, Tenn., the shipments originating without the state of Tennessee, and moving between June 12, 1908, and May 15, 1911. The claim was first filed with the Commission July 7, 1910. Reparation is asked.

The several shipments moved from Ashburn, Mo., and Kenvil, Thompsons Point, Magazine, and Gibbstown, N. J., to Copperhill, via Knoxville. For the haul to Knoxville charges were assessed on basis of first-class rate, and on none of the shipments is any question raised as to the reasonableness of such rate.

All of the shipments moved from Knoxville to Copperhill over the line of the Louisville & Nashville Railroad and charges were assessed thereon at a rate of 96 cents per 100 pounds. This charge is the double first-class rate applicable from and to those points. Complainant contends that any charge based on a rate higher than the first class is unreasonable because in official classification territory the maximum rate for the transportation of dynamite in carloads is the first-class rate, except as to some points on the New York, New Haven & Hartford Railroad, where commodity rates are published
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approximately equal to one and a half times the first class; that the same is true in Wisconsin, Minnesota, Kansas, Nebraska, Oklahoma, Colorado, and Texas; that from and to many points the rates are less than first class; and that in the southeastern territory the first-class rate prevails except as to the local rates on the Louisville & Nashville and the Nashville, Chattanooga & St. Louis railroads.

It is further contended that, with the element of danger eliminated, dynamite, in view of its bulk in proportion to weight, easy handling, its loading capacity in the car, and its value, would properly be rated with articles taking the fifth-class rates, or approximately one-half of the first-class rate. If this is the proper classification when dynamite is charged at the first-class rate the charge is one-half for risk or insurance and one-half for transportation service; and when double the first-class rate is assessed the insurance charge becomes 300 per cent of that for transportation.

The ingredients that enter into the manufacture of dynamite are nitric or sulphuric acid, glycerin, and wood pulp, or siliceous earth. In the several classifications these acids take the fourth or fifth class rates, glycerin takes third or fifth class, and wood pulp and siliceous earths take fifth class or lower.

The defendant sought to justify the double first-class rate on the ground that the expense incurred in conforming to the Commission's rules governing the transportation of high explosives was great; that the extra difficulty of complying with these rules on branch lines increased the expense; that consumers have made no complaint though the rates now attacked have been in force for several years; that complainant is under no disadvantage in the matter of rates as compared with its competitors; and that the line from Knoxville to Copperhill is a mountainous one, involving unusual expense and risk in handling the traffic.

The rules governing the transportation of explosives are no more onerous upon the defendant than upon other carriers; they must be observed by those who charge the first-class rate or less. These rules present no reason why the Louisville & Nashville should charge twice as much for transporting dynamite as other carriers charge. The fact that the rate has been enforced for several years without protest on the part of shippers does not justify its maintenance if it is unreasonable. Nor is the fact that all shippers of high explosives suffer alike a basis for refusing relief. The mountainous character of the country and the difficult operation of the road does not present a situation essentially different from that which obtains on many other lines throughout the country where the first-class basis is applicable. Dynamite is used extensively in mines, which are frequently situated on branch lines in mountainous regions.

The Louisville & Nashville further represents that over its entire line it applies double first-class rate to local carload shipments of dynamite, and that it considers such charges reasonable. It appears in evidence that some time in 1906 the Louisville & Nashville acquired the line extending from Etowah, on its main line, 60 miles from Knoxville, to Copperhill, which was known as the Atlanta, Knoxville & Northern Railway. Prior to March 1, 1907, the rate applied from Knoxville to Copperhill was first class, but since then the rate has been double first class. The distance from Knoxville to Copperhill is 111 miles, and 96 cents per 100 pounds, the double first-class rate, yields 17.3 cents per ton per mile. The loading of dynamite is heavy, most of the cars in question loading in excess of 35,000 pounds and a number of them exceeding 40,000 pounds. On competitive traffic the Louisville & Nashville applies the first-class rate. For instance, on the shipments in question, a number of which moved into Knoxville over the Louisville & Nashville, the rate applied to that point was first class.

Considering all the facts and circumstances, we are of the opinion and find that the rate in question is unreasonable to the extent it exceeds the first-class rate and that the Louisville & Nashville Railroad Company should be required to establish and maintain for the future for the transportation of interstate shipments of dynamite in carloads from Knoxville, Tenn., to Copperhill, Tenn., on interstate traffic a rate no higher than the first-class rate contemporaneously maintained between the same points.

The record in this case shows that complainant paid the freight charges on the shipments in question in the first instance, but it further shows that the charges were included in the invoice price of the dynamite, and therefore the charges were ultimately paid by consumers. Under these circumstances it appears that complainant was not damaged and an award of reparation may not properly be made in its favor. An order will be entered accordingly.

25 I. C. C.

No. 4348.

FARRAR LUMBER COMPANY

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted December 18, 1911. Decided October 7, 1912.

Rates on lumber from Dalton, Ga., to certain local points on defendant's line intermediate to Nashville, Tenn., found to be unreasonable, and lower rates prescribed for the future. Reparation awarded.

J. B. Sizer for complainant.

Charles J. Rixey, jr., for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant, a copartnership composed of J. K. Farrar, H. B. Farrar, and F. F. Farrar, is engaged in the lumber business at Dalton, Ga. Its petition, filed August 26, 1911, attacks the rates charged for the transportation of lumber in carloads from Dalton to local stations on the main line of defendant's road intermediate to Nashville, Tenn. It is alleged that the rates are unreasonable and unduly discriminatory as compared with the rate from Dalton to Nashville, and that they are also violative of the fourth section of the act; that the classification of lumber into "dressed" and "rough" and the exaction of a higher rate on the former than on the latter is unreasonable; and further, that the failure of defendant to absorb a charge of \$2 per car for switching cars from complainant's plant to defendant's line is unreasonable. Reparation is asked.

The rates involved and the distances from Dalton are as follows:

From Dalton, Ga., to—	Miles.	Rate in cents per 100 pounds.	
		Dressed.	Rough.
Chattanooga, Tenn.....	28	34	24
Bridgeport, Ala.....	67	10	8
Stevenson, Ala.....	77	94	84
Cowan, Tenn.....	101	12	11
Decherd, Tenn.....	107	124	114
Tullahoma, Tenn.....	120	124	124
Wartrace, Tenn.....	134	14	12
Bell Buckle, Tenn.....	138	144	124
Christiana, Tenn.....	147	164	144
Murfreesboro, Tenn.....	157	164	144
Nashville, Tenn.....	189	10	10

Complainant's claim as to unjust discrimination is based upon a comparison of the rates in question with the rate from Dalton to Nashville. In support of the charge of unreasonableness complainant filed statements showing the rates on lumber in effect on the Cincinnati, New Orleans & Texas Pacific Railway from Dalton to Cincinnati, Ohio, and on the Southern Railway from Dalton to Bristol, Va., as follows:

Rates in cents per 100 pounds.

FROM DALTON, GA., VIA CINCINNATI, NEW ORLEANS & TEXAS PACIFIC RAILWAY.

To—	Miles.	Rate.	To—	Miles.	Rate.
Rathburn, Tenn.....	59	73	Oakdale, Tenn.....	122	113
Graysville, Tenn.....	71	83	Somerset, Ky.....	215	134
Dayton, Tenn.....	76	83	Lexington, Ky.....	294	15
Rockwood, Tenn.....	108	103	Cincinnati, Ohio.....	376	15

FROM DALTON, GA., VIA SOUTHERN RAILWAY.

Cleveland, Tenn.....	29	4	Coal Creek, Tenn.....	142	83
Charleston, Tenn.....	41	43	Jellico, Tenn.....	176	10
Athens, Tenn.....	56	53	Fonda, Ky.....	196	10
Sweetwater, Tenn.....	70	53	Middlesboro, Ky.....	189	10
London, Tenn.....	82	63	Greenville, Tenn.....	185	10
Lenoir City, Tenn.....	88	8	Johnson City, Tenn.....	219	11
Knoxville, Tenn.....	111	8	Bristol, Va.....	242	11

Complainant further offered evidence to show that in the opposite direction defendant maintained from certain of the local points mentioned rates on dimension lumber, used in the manufacture of chairs, wagons, boxes, and crates, lower than the regular lumber rates from Dalton to said points. For instance, the rates, in cents per 100 pounds, on oak dimension lumber, crate, and chair stock, to Dalton, are as follows:

From—	Commodity.	Rate.
Bridgeport, Ala.....	Oak dimension lumber.....	73
Do.....	Crates, k. d.....	43
Stevensville, Ala.....	Chair stock.....	83
Tulahoma, Tenn.....	do.....	83
Murfreesboro, Tenn.....	do.....	11

Defendant's witness testified that the rates on lumber to Nashville are made primarily with relation to the rates from Dalton to the Ohio River and secondarily in competition with rates from all other producing sections in Georgia, Alabama, and Mississippi, in fact, the entire lumber belt, particularly the pine belt; that Nashville is classed with the Ohio River cities and the basis which has been in effect many years is to make the rates to Nashville 5 cents per 100 pounds less

than to the Ohio River crossings on heavy commodities. It is urged that in addition to water competition at Nashville defendant competes with other carriers reaching that point, which fact renders it impossible for defendant to control the rates.

Originally the rates from Dalton to the local points mentioned were made on a graduated mileage basis, the rates increasing in proportion to the length of the haul. Defendant states that when it leased from the state of Georgia the Western & Atlantic Railroad, which included the line from Dalton to Chattanooga, there were in effect over the entire line of the latter road rates established by the Georgia railroad commission; that by combining these rates with defendant's local mileage scale of rates from Chattanooga, lower rates were produced than the fixed mileage rates from Dalton to these points. In making the through rates from Dalton there is used as the basing rate either the rate of 10 cents from Dalton to Nashville or a rate of $3\frac{1}{2}$ cents from Dalton to Chattanooga. To these basing rates the locals from Nashville to the intermediate points or from Chattanooga to said points are added, whichever will give the lower combination. A rate of $3\frac{1}{2}$ cents, instead of the full local rate of $3\frac{3}{4}$ cents, is used as the basing rate to Chattanooga in order to prevent reshipping at the latter point. Defendant filed as an exhibit the standard local mileage scale in force on its line. It is urged that the rates complained of are much less in every instance than if the standard scale in effect were applied. Defendant, however, admits that the standard local mileage scale in force on defendant's system does not apply where there are circumstances and conditions making an exception necessary, and that there are such circumstances and conditions in the case of the rates from Dalton to the stations on the Nashville & Chattanooga division of its line. The rate from Dalton to Murfreesboro, if the mileage scale was used, would be $18\frac{1}{2}$ cents, which unquestionably would be a high rate.

The revenue in mills per ton per mile produced by the rates on dressed lumber from Dalton to the points complained of is: Chattanooga, 19.7; Bridgeport, 29.8; Stevenson, 25.3; Cowan, 23.7; Decherd, 23.3; Tullahoma, 22.5; Wartrace, 20.9; Bell Buckle, 21.0; Christiana, 21.9; Murfreesboro, 19.7.

For the year ending June 30, 1911, defendant's average revenue per ton per mile on all freight was 10.15 mills. It has been repeatedly held that, comparatively speaking, lumber, for many reasons not necessary to enumerate, should take a low rate. Upon the whole record we are of opinion and find that the rates assailed are unreasonable to the extent that they exceed the rates given in the table following.

Rates in cents per 100 pounds.

From Dalton, Ga., to—	Rate.	From Dalton Ga., to—	Rate.
Bridgeport, Ala.....	7	Wartrace, Tenn.....	10
Stevenson, Ala.....	7½	Bell Buckle, Tenn.....	10
Cowan, Tenn.....	9	Christiana, Tenn.....	11
Decherd, Tenn.....	9	Murfreesboro Tenn.....	11
Tullahoma, Tenn.....	9½		

Defendant contends that dimension lumber is in the nature of a by-product of sawmills, being mostly unmerchantable lumber cut to certain sizes, and not competing with the lumber shipped by complainant. Relative to defendant's practice of classifying lumber into "dressed" and "rough" and the charging of higher rates on the former than on the latter, defendant admits that there are certain grades of dressed lumber lower in value than certain other grades of rough lumber, but maintains that any grades of lumber dressed must be increased in value and in every way made more desirable than the same grade of lumber in the rough. In *Oregon & Washington Lumber Mfrs. Asso. v. S. P. Co.*, 21 I. C. C., 389, the Commission said:

Ordinarily the same rate is applied to all lumber without reference to its value or condition, and this rate frequently includes not only manufactured lumber, but articles made from it, like doors, sash, blinds, etc. To this general rule exceptions are sometimes made by the carriers themselves whenever the exigencies of a particular case require it; and without suggesting that any general departure from the general rule would be desirable or reasonable, we see no reason why, in particular cases, lumber may not properly be subjected to a further classification.

Defendant, therefore, may, if it sees fit, publish rates on rough lumber from Dalton to the points of destination complained of lower than those above prescribed.

With respect to the switching charges complained of, it appears that the Southern Railway exacts a charge of \$2 per car for switching from complainant's plant to defendant's tracks. By tariff effective January 22, 1911, defendant provided for the absorption of this charge. However, through error the provision was canceled on September 1, 1911, but effective October 11, 1911, defendant again published the authority for the absorption. Under the circumstances of record we are of opinion and find that the failure of defendant between September 1 and October 11, 1911, to absorb this charge of \$2 per car for switching from complainant's plant at Dalton to the tracks of defendant, cars destined to the above-named local points intermediate to Nashville, was unjust and unreasonable.

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. We also find that in so far as complainant has paid freight charges upon the basis herein found to be unreasonable, it has been damaged thereby to the extent such charges exceeded what would have been collected upon the basis herein found reasonable, and that complainant is entitled to reparation upon said basis. Upon receipt of a statement of shipments for which complainant has paid charges upon the basis found unreasonable, and its approval by the carrier and the Commission, an order of reparation will be entered.

It will be understood that our findings in this case are without prejudice to any investigation of these rates which may be made in pursuance of the provisions of the amended fourth section of the act. An order will be entered in accordance with the findings herein announced.

25 I. C. C.

No. 4693.

C. HAFFER LUMBER COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

No. 4693 (Sub-No. 1).

SAME

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
PANY.

Submitted May 25, 1912. Decided October 8, 1912.

1. Rates for the transportation of lumber in carloads from Council Bluffs, Iowa, to various points west of the Missouri River, which are $1\frac{1}{2}$ cents per 100 pounds higher than the rates from Omaha, Nebr., to the same points, not found unreasonable or unjustly discriminatory.
2. Rates for the transportation of lumber in carloads from Council Bluffs, Iowa, to University Place and Ruskin, Nebr., found unreasonable. Reparation awarded.

George H. Mayne for complainant.

C. C. Wright for Chicago & North Western Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

Edson Rich for Union Pacific Railroad Company.

William A. De Bord for Platner Lumber Company, intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the lumber business at Council Bluffs, Iowa, and attacks as unreasonable and unjustly discriminatory rates for the transportation of lumber in carloads from Council Bluffs to certain points in Nebraska, Kansas, Colorado, and South Dakota. Reparation and the establishment of reasonable rates for the future are asked. The Platner Lumber Company of Omaha, Nebr., has intervened in the proceeding.

The petition in No. 4693 was filed February 15, 1912. The points of destination involved are located on the lines of the Chicago & North Western Railway; Chicago, Rock Island & Pacific Railway; Chicago, Burlington & Quincy Railroad and Union Pacific Railroad in the above-named states. Through rates on lumber from Council Bluffs to these points are made by adding a bridge arbitrary of 1½ cents per 100 pounds to the rates from Omaha, and complainant contends that the addition of this arbitrary results in rates from Council Bluffs that are excessive and unjustly discriminatory as compared with the rates from Omaha to the same destinations. Complainant regards the rates from Omaha as reasonable and asks that Council Bluffs be given equal rates.

On classes and practically all commodities except lumber, Council Bluffs is accorded the flat Omaha rates to the destinations in question. The Union Pacific has its own bridge between these two cities, but the other defendants either have to absorb the bridge arbitrary or the Burlington and the North Western may move the traffic via circuitous routes involving hauls of about 20 miles to their own bridges above or below the cities. It is contended that the rates on lumber from Omaha are considerably lower than the rates on other commodities and defendants urge that owing to the comparatively low rate of revenue derived from this lumber traffic they can not afford to extend the Omaha basis to Council Bluffs. They also call attention to the fact that most of the destinations involved are in the state of Nebraska, and that the rates from Omaha to those points were prescribed by state authority and are now in litigation in the federal courts. The bridge arbitrary does not appear to be excessive as compared with arbitraries at other river crossings, and the record does not show that complainant is in any way prejudiced in the sale of its lumber, by reason of the application of the flat Omaha rates to Council Bluffs on other commodities. Complainant offers in evidence the fact that from St. Joseph, Mo., on the east bank of the river, rates to certain destinations in Kansas and Nebraska are the same as from Leavenworth, Kans., and other points on the west bank of the river, and that the rates for hauls of equal distances are in some instances somewhat less from lower Missouri River points than from Council Bluffs, but these facts do not of themselves warrant a condemnation of the rates in question. On inbound lumber from certain points east and south, Omaha enjoys equal rates with Council Bluffs, but this condition is due to various causes that do not enter into the rate situation now before us.

Upon consideration of the whole record we are unable to find that the rates complained of are unreasonable or unjustly discriminatory. This complaint therefore must be dismissed.

The petition in Sub-No. 1 was filed March 26, 1912, and relates to two carloads of lumber shipped via the Chicago, Rock Island & Pacific Railway from Council Bluffs. One was consigned to University Place, Nebr., weighed 38,500 pounds, and charges in the sum of \$26.95 were collected, based upon a rate of 7 cents per 100 pounds. The other was consigned to Ruskin, Nebr., and charges in the sum of \$43.18 were collected, based upon a rate of 12.7 cents per 100 pounds, and a weight of 34,000 pounds. Complainant alleges that defendant's track scales at destination showed the weight of this shipment to be 31,200 pounds, but the record contains no evidence to show that the weight upon which charges were based was incorrect.

At the time these shipments moved the rates from Omaha were: to University Place, 4.25 cents, and to Ruskin, 10.2 cents. Rates from Council Bluffs to other stations in Nebraska were made by the addition of the 1½-cent arbitrary. The maintenance of relatively higher rates to these two points is unexplained upon the record, and on January 5, 1911, defendant published rates to these two points 1½ cents higher than the rates from Omaha, which are still in force.

Upon consideration of all the facts and circumstances we are of the opinion and find that the rates charged on these two shipments of lumber were unreasonable to the extent that they exceeded 5.75 cents on the shipment to University Place and 11.7 cents on the shipment to Ruskin. As these rates have been in force for nearly two years no order for future maintenance will be entered.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rates found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rates herein found reasonable, and that it is therefore entitled to an award of reparation in the sum of \$8.21, with interest thereon from November 7, 1910. An order will be entered in accordance with the conclusions herein announced.

25 I. C. C.

No. 4395.
PLATTEN PRODUCE COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted July 27, 1912. Decided October 7, 1912.

A carload of potatoes moving from Green Bay, Wis., through Sterling, Barstow, and Galesburg, Ill., to Galva, Ill., was not misrouted. Complaint dismissed.

George A. Platten for complainants.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, A. L. Platten and George A. Platten, are copartners doing a wholesale produce business under the name of the Platten Produce Company at Green Bay, Wis. In their complaint, filed September 9, 1911, it is alleged that unjust and unreasonable charges were collected for the transportation of a carload of potatoes from Green Bay to Galesburg, Ill., in November, 1910.

The shipment consisted of 200 sacks of potatoes weighing 30,000 pounds and was shipped on November 10, 1910, consigned to Galva, Ill. On arrival of the car at that place the customer to whom it was consigned directed that it be reforwarded to Galesburg on basis of the through rate from Green Bay. As the car had moved through Galesburg en route to Galva the agent of the Burlington refused to forward it on such terms, because to do so would involve a back haul. After a delay caused by this controversy the car was reforwarded to Galesburg at the local rate of 5.4 cents per 100 pounds. The freight charged amounted to \$16.20, to which was added \$8 demurrage charges at Galva. The rate was 17 cents from Green Bay to both Galva and Galesburg. The charges at that rate were \$51 to Galva, and the total amount collected was \$75.20.

The complainants contend that Galva is intermediate to Galesburg on shipments from Green Bay and that if the car had been properly routed by the Chicago, Burlington & Quincy in the first instance it would have moved from Sterling, Ill., where it was delivered to the Burlington by the Chicago & North Western Railway, through Denrock and Zearing, as via that route Galesburg would be beyond

Galva. Reparation is asked in the sum of \$24.20. The distance from Sterling to Galva via the route suggested by complainants is 99 miles, and via the route of movement 84 miles.

The tariff governing the routing of the car provided that it could be routed through either Chicago or Sterling. The tariff provision concerning reconsignments effective at the time provided:

No change in destination or route involving a back haul will be made, other than at the sum of the local rates to and from the point from which the change is made.

There is no allegation in the complaint, and no proof in the record, that specific routing instructions via any particular junction were given by the consignors. If complainants desired the car to arrive at Galva from the east they should have directed the routing via Chicago. The fact is that after the shipment arrived at Galva an unforeseen exigency arose for which the carriers were in no degree responsible, necessitating further transportation service. The circumstances surrounding the transportation of the shipment in question do not establish misrouting on the part of the defendants, nor are the charges shown to have been unreasonable. An order will be entered dismissing the complaint.

25 I. C. C.

No. 4432.
F. G. ALEXANDER
v.
SOUTHERN RAILWAY COMPANY.

Submitted April 20, 1912. Decided October 7, 1912.

Demurrage charges at Chattanooga, Tenn., on two carloads of hay from Panama, Mo., found to have been properly assessed in one instance, and refund of \$6 ordered in the other.

J. T. Slatter for complainant.
Alexander M. Bull for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the wholesale brokerage business at Birmingham, Ala. His petition, filed September 26, 1911, alleges the unlawful exaction of demurrage charges in the sum of \$27 on two carloads of hay shipped in September, 1910, from Panama, Mo., to Chattanooga, Tenn. Reparation is asked.

The complainant alleges that the two cars, viz, C. & E. I. 60369 and M. P. 19982, were shipped to Chattanooga consigned to order, notify Carlisle Commission Company; that all cars so consigned were intended for complainant; that he had an understanding with defendant's commercial agent at Birmingham to the effect that he should be notified at Birmingham of the arrival at Chattanooga of all cars so consigned; and that numerous cars had been so handled. He contends that notwithstanding these circumstances he was served with no notice of arrival of the first car herein involved until demurrage in the amount of \$17 had accrued; and that while the second car was en route and before it reached Memphis, the point at which transportation over the Southern Railway began, complainant instructed defendant's commercial agent at Birmingham to divert the car to North Birmingham and repeated instructions as to notification of arrival; that on October 4, 1910, upon advice from the commercial agent that this car had arrived at North Birmingham bill of lading was surrendered and instructions for disposition were given. Thereafter and when demurrage to the amount of \$10 had accrued defendant advised that the car had not reached North Birmingham

but was at Chattanooga awaiting payment of demurrage charges. The car was thereupon ordered delivered to the United States Cast Iron Pipe & Foundry Company at Chattanooga.

Defendant's demurrage tariff in force at the time authorized an allowance of 48 hours free time for loading and unloading, and 24 hours on cars held for reconsignment or switching orders, time to be computed on the latter class of cars from the first 7 a. m. after the day on which notice of arrival is sent to consignee. It provided as to "notification":

Consignee shall be notified by carrier's agent in writing, or as otherwise agreed to by carrier and consignee, within 24 hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials, and numbers and the contents, and if transferred in transit, the initials and number of the original car. In case car is not placed on public-delivery track within 24 hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

After expiration of free time a charge of \$1 per day or fraction thereof is imposed. Causes for exemption from demurrage charges as specified in the tariff include delayed and improper notices by carrier and railroad errors and omissions.

The record fails to disclose that there was a written agreement for notification such as is alleged in the complaint and it appears that such verbal arrangement as may have existed was of an indefinite character and was made during the life of the firm of Alexander & Duncan, to which F. G. Alexander succeeded on July 15, 1910. Moreover, it was not established that prior to the time of these transactions any cars consigned to order, notify Carlisle Commission Company, or order, notify F. G. Alexander, had actually been handled under the so-called arrangement; and complainant admitted that his custom was to call upon defendant's commercial agent upon receipt of information of forwarding of a car, and advise disposition to be made upon arrival. He claims to have taken such action with respect to these cars, but offered nothing in support of the claim and was misinformed of the consignees of the cars as indicated in bills of lading and waybills.

The bills of lading and original waybills for the two cars in issue show that they were straight shipments, the first consigned to Carlisle Commission Company, Chattanooga, Tenn., and the second to F. G. Alexander, Chattanooga, Tenn. Defendant introduced certified copies of its postal-card notices of arrival dated September 21, 1910, and September 27, 1910, respectively, and addressed to Carlisle Commission Company, Chattanooga, Tenn., and F. G. Alexander, Chattanooga, Tenn.

That these dates were the dates of arrival and that the consignees as shown on bills of lading and waybills were recorded as having

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been notified September 22 and September 28, respectively, is substantiated by the Chattanooga agent's daily report to the East Tennessee Demurrage & Storage Bureau, an extract from which was filed in evidence.

As to car C. & E. I. 60369, we find that carrier was not chargeable with error or failure to give notice by mail to the consignee named in the billing, which in this respect corresponded with the bill of lading. Under just what circumstances complainant finally learned of the detention of this car and gave orders for disposition the record does not show, but it is not contested that such orders were given after 7 a. m. of October 12, 1910. The demurrage charges on this car were therefore properly assessed and may not lawfully be refunded.

In connection with car M. P. 19982, defendant admits surrender of bill of lading at Birmingham and receipt of placement orders for North Birmingham October 4, 1910, and that from that date it was in possession of correct information of the consignee. It accepts liability for failure to thereupon divert to North Birmingham or at once to put complainant in position to order disposition.

We find that defendant exercised due diligence in an effort to notify the known consignee of arrival of this car and was not chargeable with error or omission so far as relates to the period from date of notification to October 4, 1910. We further find that the demurrage charges accruing from October 4, 1910, were unlawfully collected and that complainant is entitled to refund of \$8, with interest from October 25, 1910. An order will be entered accordingly.

25 I. C. C.

No. 3178.
MASON BROTHERS
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted May 2, 1911. Decided October 7, 1912.

Refrigeration charges from Lodi, Cal., to eastern points of destination found to have been unduly prejudicial to the extent they exceeded charges contemporaneously in effect from Acampo and Woodbridge, Cal.

G. M. Steele for complainant.

George D. Squires for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged in the fruit business at Lodi, Cal. By petition, filed March 19, 1910, it is alleged that the refrigeration charges exacted by defendants on shipments of fruit from Lodi during the grape-shipping season in 1908 and 1909 were unreasonable and unduly prejudicial. Reparation is asked.

Complainant's shipments consist mainly of grapes. Lodi is not a regularly maintained icing station, being operated as such during the grape-shipping season only, which in 1908 was from August 21 to November 15 and in 1909 from August 9 to November 18. During the periods from November to August of the years mentioned, defendant Southern Pacific Company furnished complainant pre-iced cars from Sacramento, Cal. After such cars were loaded at Lodi they were returned to Sacramento or to Roseville, Cal., there re-iced and forwarded to destination without extra charge for said re-icing.

Between August and November of said years, when there were facilities for icing at Lodi, complainant was accustomed to order through the Lodi office pre-iced cars for loading purposes. Such cars were delivered to complainant from either Sacramento or Lodi. During the process of loading the warm fruit causes considerable melting of the ice in the cars, approximately from two to three tons in 24 hours. After loading the tanks of the cars were, under the tariffs, required to be replenished with ice at Lodi and charges exacted therefor at the rate of \$6 per ton. Such charges were added to the regular refrigeration charges and, together with the freight charges, were collected before the shipment was delivered to the consignee.

Complainant contends that the refrigeration charges exacted under defendant's tariffs on shipments in pre-iced cars from Lodi to eastern points of destination, during the periods of 1908 and 1909 when icing facilities were provided at Lodi, were unreasonable and unduly discriminatory when compared with the refrigeration charges on like shipments from Acampo and Woodbridge, Cal.

Effective July 25, 1908, defendant Southern Pacific Company published a joint refrigeration tariff in which Lodi, Acampo, and Woodbridge were given the same group rating to eastern points of destination. Taking Chicago, Ill., as a typical point of destination, the regular refrigeration rate from Lodi, Acampo, and Woodbridge at the times mentioned was \$85. In said refrigeration tariff it was provided that the charges set forth therein were based on one full icing of car at loading point after loading was completed, and that cars ordered iced before loading at certain stations where icing facilities were maintained would be re-iced before departure, and the ice required to replenish the tanks charged for at certain specified prices per ton. Lodi was named as one of the stations to which the latter provisions applied and a rate of \$6 per ton was fixed as the charge for re-icing.

Acampo and Woodbridge are nonicing stations. Acampo is located on the main line of the Southern Pacific Company $2\frac{1}{2}$ miles north of Lodi. Woodbridge is located on a branch line of the latter road 2 miles west of Lodi. During the period mentioned Acampo shippers were permitted to order pre-iced cars from Sacramento, and such cars after loading were re-iced at the latter point without extra charge. At Woodbridge shippers were privileged to order pre-iced cars either from Sacramento or Lodi, and such cars after loading were re-iced at Lodi or Sacramento without extra charge. From Lodi between 1,500 and 2,000 cars are shipped to eastern points of destination annually, from Acampo 200 cars, and from Woodbridge 100 cars.

Defendant contends that upon the pleadings the Commission has no jurisdiction to grant the complainant relief. It is argued that where a car is pre-iced delivery does not take place until the car is loaded, the bill of lading issued, and the shipment turned over to the carrier; that until then there is no shipment and no shipper, and whatever the parties do prior to that moment is not controlled by the act. An examination of sections 1 and 6 of the act will show that this contention is not well founded.

Defendant further contends that when a shipper is located at an icing station he may with safety to the shipment order a dry car, being assured that as soon as his fruit is loaded the car will be promptly iced and forwarded at little or no risk of damage, while a

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shipper at a nonicing station is not so favorably situated, and he can order a dry car only at great danger to the shipment.

It appears that Lodi was made an icing station during the grape-shipping season because defendants found it to be cheaper to furnish ice at Lodi than to pre-ice the cars at Sacramento and return them to that point for re-icing after loading at Lodi. Under a readjustment of icing charges provided by the tariffs now in effect, Lodi is on a parity with Acampo and Woodbridge in the matter of pre-iced cars and no complaint is made as to the present refrigeration charges.

From an examination of all the facts and circumstances we are of opinion and find that the exaction of higher refrigeration charges from Lodi than from Acampo and Woodbridge during the period covered by the complaint constituted undue discrimination.

Complainant in its petition made a general demand for reparation and at the hearing introduced in evidence a number of expense bills covering refrigeration charges on shipments of grapes from Lodi to various eastern points of destination during the period covered by the complaint. Upon the record as it now stands no order of reparation can be entered, but upon presentation of proof that complainant actually paid the charges complained of, together with an agreed statement as to the amount of reparation due under the conclusions of the Commission, an order of reparation will be entered.

25 I. C. C.

No. 4787.
HOLLINGSHEAD & BLEI COMPANY
v.
PENNSYLVANIA COMPANY.

Submitted June 12, 1912. Decided October 8, 1912.

Demurrage charges occasioned by detention of a car of barrel heading at Cincinnati, Ohio, awaiting payment of freight charges thereon, found not to have been unlawful or unreasonable. Complaint dismissed.

C. H. Loweth for complainant.

A. P. Burgwin and *James Stillwell* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainant, a corporation engaged in the manufacture of iron, steel, and wood products at Chicago, Ill., by petition, filed April 4, 1912, assails as unjust and unreasonable certain demurrage charges collected by defendant at Cincinnati, Ohio.

June 9, 1910, complainant shipped from Tustin, Mich., a carload of barrel heading consigned to itself at Brighton station, Cincinnati, Ohio, Baltimore & Ohio Southwestern delivery. By letter of June 15, 1910, complainant notified the agent of the Baltimore & Ohio Southwestern Railway at Brighton station to deliver the car upon its arrival to J. M. Schott & Sons Company, after collecting freight charges. The car arrived at Cincinnati on June 20, 1910, and notice thereof was immediately mailed to Hollingshead & Blei Company, the consignee named in the bill of lading. Like notice was given to J. M. Schott & Sons Company, who thereupon informed complainant at Chicago that the car was held at Cincinnati for surrender of bill of lading. June 22, 1910, complainant surrendered the bill of lading to an agent of the defendant at Chicago who at once notified the agent at Cincinnati by wire of the fact, and requested prompt delivery of the car.

June 28, 1910, the freight charges were paid by J. M. Schott & Sons Company, and the car was turned over by defendant, in accordance with the bill of lading, to the Baltimore & Ohio Southwestern Railway for delivery. Demurrage charges amounting to \$5 had accrued in the meantime, which were likewise paid by J. M.

Schott & Sons Company, and the same together with the freight charges were charged back to complainant.

Complainant contends that the demurrage charges were occasioned by failure of the defendant to deliver the car as instructed in the bill of lading and were therefore unlawful.

The instructions contained in the bill of lading were to turn the car over to the Baltimore & Ohio Southwestern Railway for delivery to the consignee named therein at Brighton station, a point within the switching limits of Cincinnati. The notice was sent in the usual manner to such consignee.

Defendant's tariffs authorize demurrage to be collected, after expiration of free time allowed, in all cases—

Where cars are destined for delivery to or for forwarding via connecting lines and are held for surrender of bill of lading or for payment of lawful freight charges.

The car in question was destined for delivery to a connection of defendant's at Cincinnati, whose rules governing switching charges provide that—

No cars will be received from connecting lines for delivery at points within the Cincinnati switching limits unless all freight charges, including B. & O. S. W. switching charges, are prepaid.

Under this provision the Baltimore & Ohio Southwestern could not receive the car in question until all freight charges were paid. As already stated, these charges were not paid until June 28, 1910. The car was detained for lack of earlier payment, and thus the demurrage complained of accrued. The detention was not occasioned by any failure of the defendant. It gave the usual notice of the car's arrival to the consignee named in the bill of lading. It gave a similar notice to J. M. Schott & Sons Company, for whom, it had learned, in some manner not disclosed by the record, the shipment was intended.

The defendant was under no obligation to tender the car to the Baltimore & Ohio Southwestern until the freight charges were paid; and if it had done so, the tender could not have been accepted in view of the restrictive provision contained in the Cincinnati switching tariff of that company. It was not the fault of the defendant that the charges were not sooner paid.

Upon the facts of record we are of opinion and find that complainant has not shown itself to have been damaged by reason of any failure or unlawful act on defendant's part and is therefore not entitled to an award of reparation as claimed. It follows that the complaint must be dismissed, and an order will be entered accordingly.

No. 4527.

FARIBAULT FURNITURE COMPANY

v.

**CHICAGO GREAT WESTERN RAILROAD COMPANY
ET AL.**

Submitted February 27, 1912. Decided October 8, 1912.

Failure to post supplement to tariff which contained no change as to rate, and misleading quotation by defendant carrier's local agent are not circumstances affording basis for reparation. Complaint dismissed.

Frank A. Larish for complainant.

Briggs, Thygeson & Everall for Chicago Great Western Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

The complainant, a corporation, having its principal place of business in the city of Faribault, Minn., is engaged in the manufacture and sale of furniture. By petition, filed October 28, 1911, it alleges that charges for the transportation of one carload of furniture from Faribault to Fort Worth, Tex., were based on a minimum of 16,500 pounds, when, in fact, according to information furnished complainant by the agent of the Chicago Great Western prior to date of shipment, said charges should have been assessed on a minimum of 13,500 pounds. The actual weight of the shipment was 14,000 pounds, and it is alleged that charges based on the higher minimum were unreasonable. Reparation is asked.

About May 25, 1910, complainant made application to the local freight agent of defendant, the Chicago Great Western Railroad Company, at Faribault for the carload rate and minimum on new furniture from Faribault to Fort Worth applicable to a car 40 feet long and 10 feet high, inside measurement. The agent quoted a rate of \$1.01½ per 100 pounds, minimum weight of 13,500 pounds. On May 28, 1910, a car having been furnished as requested a shipment of furniture weighing 14,000 pounds was made to Fort Worth, Tex., over defendants' lines. On arrival at destination charges were collected on the basis of a minimum of 16,500 pounds. The rate in effect at the time of the movement was \$1.01½, carload minimum weight on a 40-foot "furniture-equipment" car 16,500 pounds. The carload minimum for a standard box car of the same length was 13,500 pounds.

Complainant alleges that tariffs were not on file at local freight station of defendant, the Chicago Great Western Railroad, in Faribault when request was made by complainant for rates and car, and in consequence complainant was obliged to depend on the accuracy of the quotation made by defendant's agent.

The record shows that a copy of the tariff, although filed with the Commission, had not been posted for public inspection at Faribault. A copy of the tariff had been mailed to the agent of the principal defendant at that point with directions to post in the freight receiving station, but it appears that it either failed to reach the agent or he neglected to post it.

It is contended that the facts in this case bring it within the principle announced in the case of *Kiel Woodenware Co. v. C., M. & St. P. Ry. Co.*, 18 I. C. C., 242, where reparation was awarded for the failure of a carrier to post a tariff changing the rate. In the case cited complainant could have arranged his shipments, if he had been advised of a change in the tariff, so as to procure the lower rate formerly effective. In this case there was no change either in the rate effective at the time of movement or the minimum complained of. It had been in existence prior to the time of shipment. In this respect it differs in principle from the case of *Canadian Valley Grain Co. v. C., R. I. & P. Ry. Co.*, 19 I. C. C., 108, where reparation was granted on account of failure of defendant's agent to post a supplement to the tariff changing the rate, thus causing shipper to sustain a loss, which with previous knowledge of such change loss to complainant would have been avoided. The basis of complainant's claim of damages is vague and uncertain, and there is no explanation of how he could have had his shipment moved in any different manner than that in which it did move. The weight was 14,000 pounds, and the size of the car requested was necessary for its carriage. Regardless of the rate quoted by carrier's agent the published rate is the one that must be paid by shipper and collected by carrier, under the terms of the statute. The charges collected were in accordance with tariffs on file and have not been shown to have been unreasonable. The complaint will therefore be dismissed.

25 I. C. C.

No. 4825.

GRIFFEN H. DEEVES LUMBER COMPANY

v.

ALABAMA & VICKSBURG RAILWAY COMPANY ET AL.

Submitted June 11, 1912. Decided October 8, 1912.

Charges for transportation of two carloads of lumber from Brandon, Miss., to Chicago, Ill., including transit privilege at Jackson, Miss., not found to have been unreasonable. Complaint dismissed.

I. W. Preetorius for complainant.

Merrell P. Callaway for Alabama & Vicksburg Railway Company, Illinois Central Railroad Company, and Gulf & Ship Island Railroad Company.

J. D. Youman for Alabama & Vicksburg Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation engaged in the lumber business at Chicago, Ill., by petition, filed April 10, 1912, assails as unjust and unreasonable the charges collected by defendants on certain shipments of lumber from Brandon, Miss., to Chicago, Ill. Reparation is asked.

In January, 1909, complainant shipped over defendants' lines from Brandon, Miss., two carloads of lumber, originally consigned to Roodhouse, Ill., but reconsigned in transit to Chicago, Ill. The shipments were stopped at Jackson, Miss., for dressing, and charges were collected on the basis of the local rate into Jackson plus the rate thence to destination, together with certain switching charges incident to the transit service and demurrage charges occasioned by detention of the cars at Jackson.

At the time the shipments moved there was no transit privilege at Jackson applicable to lumber from points on the Alabama & Vicksburg Railway on basis of the through rate from point of origin to destination and had been none since June 30, 1908, though such privilege had been allowed under former tariffs. The through rate was lower than the combination of locals applied to the shipments. January 15, 1910, the transit arrangement was reestablished and has since remained in force.

The bills of lading under which the shipments moved, though naming no rate, each contained this notation: "Care Southern Lumber & Manufacturing Co., Jackson, Miss., for dressing." Complainant contends that the shipments were entitled to the transit privilege at Jackson on the basis of the through rate, because under tariffs in force prior to the movement transit had been allowed and is now allowed under the tariffs at present in effect.

Upon arrival of the shipments at Jackson the Southern Lumber & Manufacturing Company was notified, and that company in turn notified the complainant, that the Alabama & Vicksburg Railway tariff did not authorize transit privileges at that point on the basis of the through rate. Delay awaiting further orders from complainant was thus occasioned, which resulted in the demurrage charges complained of. The notation referred to in each of the bills of lading appears to have been made through an error on the part of the agent of the Alabama & Vicksburg Railway Company at Brandon.

It is not claimed, nor was any evidence offered at the hearing to show, that the charges collected were in themselves unreasonable. It was explained on behalf of defendants that the withdrawal for a time of the transit privilege as to lumber from points on the line of the Alabama & Vicksburg Railway was occasioned by the inability of the Illinois Central road to obtain a contract from the Southern Lumber & Manufacturing Company for the dressing of lumber. The planing mill is situated on the tracks of the Gulf & Ship Island road, with which the Alabama & Vicksburg has no physical connection at Jackson. The Illinois Central furnishes the connecting link between those two lines, and to it is generally given the outbound haul. When, at a later date, the Illinois Central perfected an arrangement for the dressing of lumber from points on the Alabama & Vicksburg the transit privilege was reestablished. No discrimination is alleged or shown.

This Commission has frequently ruled that the benefit of transit privileges can not be given a retroactive effect, and in the absence of any attack upon the charges complained of as unlawful or in themselves unreasonable, the case falls within the principle of those rulings. Upon all the facts of record we are not justified in finding that the rates charged were unreasonable or that complainant has shown itself entitled to reparation. It follows that the complaint must be dismissed.

25 I. C. C.

No. 4025.
TALGE MAHOGANY COMPANY
v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted July 29, 1911. Decided October 7, 1912.

The proper rates for the transportation of carload shipments of imported cedar and mahogany logs from Mobile, Ala., to Knoxville, Tenn., and from Knoxville to Indianapolis, Ind., were assessed. Complaint dismissed.

E. W. Bradford for complainant.

Alex. P. Humphrey, jr., for Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation located at Indianapolis, Ind. By petition, filed April 19, 1911, it alleges in substance that it was subjected by defendants to unreasonable charges for the transportation of imported cedar and mahogany logs from Mobile, Ala., to Indianapolis. Reparation is asked. This claim was first filed with the Commission February 17, 1910.

On or about March 1, 1908, there was received for complainant at the Southern Railway Company's dock in Mobile a cargo of cedar and mahogany logs from Frontera, Mexico. The shipment was loaded onto 18 cars, the ship's charges were advanced by the Southern Railway Company, and the shipment was billed for account of complainant to the Philadelphia Veneer & Lumber Company, Knoxville, Tenn., whence the cars moved as billed. It appears that shortly before the arrival of the shipments at Knoxville the consignee notified complainant that it would not receive the same, for the reason, as it develops, that the market price had declined. A representative of complainant went to Knoxville and there attempted to have the consignee receive the logs as per contract. After negotiations the consignee accepted 68,000 pounds of the logs which were selected from three of the cars. Complainant thereupon reloaded some of the cars, and the remainder of the shipments were rebilled to Indianapolis on 13 cars.

Complainant was charged and paid 19 cents per 100 pounds for the transportation from Mobile to Knoxville, and 26½ cents from Knoxville to Indianapolis. At the same time there was in effect a

joint through rate of 18 cents on imported logs when transported direct from Mobile to Indianapolis over the lines of the defendants. It is complainant's contention that the through rate should have been applied on the shipments in question, and that because this was not done it was subjected to unreasonable charges.

The reconsigning privilege provided in the tariffs in effect at the time was subject to the following limitations:

1. Provided application for such reconsignment or change of destination results from any of the following:

- (a) The commercial failure or insolvency of the original consignee.
- (b) Refusal by the original consignee, growing out of unreasonable or excessive delay to the freight while in transit.
- (c) Refusal by the original consignee, growing out of an act of God or the public enemy.

(d) Bona fide rejection by original consignee of grain, grain products, and hay when not rejected as a device for securing reconsignment.

2. Provided the original contents of the car remain unchanged.

3. Provided the car will move over route via which through rates and divisions are established.

Effective May 20, 1909, the tariff was amended to include the following:

Bona fide rejection by original consignee when not rejected as a device for securing reconsignment.

It is clear that under the tariff in effect at the time, reconsignment of the shipments could not have been made so as to have made applicable the joint through rate from Mobile to Indianapolis. The evidence is not clear whether the consignee took possession of the shipments at Knoxville or not, but from a letter filed since the case was submitted it would appear that the shipments did not pass into the possession of the original consignee, but did pass into the possession of the representative of complainant under whose direction certain of the logs were sold at Knoxville to the original consignee and the remainder reloaded onto 13 cars and rebilled to Indianapolis.

Under the facts established by the evidence the logs were transported as two local shipments, the first to Knoxville and the second from Knoxville to Indianapolis. No evidence was submitted to show that the local rates either to or from Knoxville were unreasonable. The sole contention of complainant is that the through rate should have been applied. Under the circumstances the defendants could not have lawfully applied the through rate, and in the absence of any showing that either local rate was unreasonable we are unable to find that complainant has been damaged, and the complaint will therefore be dismissed.

25 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 148.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF CORN, OATS, FEED, AND OTHER COMMODITIES IN CARLOADS FROM STATIONS ON CHICAGO, MILWAUKEE & ST. PAUL RAILWAY IN IOWA, MINNESOTA, AND SOUTH DAKOTA TO STATIONS ON MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY IN NORTH DAKOTA.

Submitted September 20, 1912. Decided October 14, 1912.

The advanced rates in question found to be unjust and unreasonable.

W. L. Martin for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

O. W. Dynes and *C. A. Lahey* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The rates under suspension are those on grain and other commodities in carloads from certain points upon the Chicago, Milwaukee & St. Paul Railway to certain other points upon the Minneapolis, St. Paul & Sault Ste. Marie Railway.

The line of the latter company, ordinarily called the "Soo," extends from Minneapolis northwest through Valley City and Minot to the Canadian border. A branch leaves the main line at Hankinson, extending westward through North Dakota, thence turning north, through Bismarck, and so returning to the main line at Drake. From Bismarck this branch extends along the north and east bank of the Missouri River for a considerable distance.

The Northern Pacific Railway Company has recently constructed a branch line from Mandan, which lies just across the Missouri River from Bismarck, north and west along the south and west bank of the Missouri, so that this new branch of the Northern Pacific comes into competition along the Missouri River with the branch of the Soo. The points at which the advances apply are these competing points upon the Soo north of Bismarck, near the Missouri River.

The representative of the Soo stated, in justifying the advance, that the higher rates were established by the Chicago, Milwaukee & St. Paul Railway at its request and that it in turn acted upon the request of the Northern Pacific. It appears that the grain rate from the points of origin in question to Bismarck has been for some time 1 cent lower than the rate to Mandan. The Northern Pacific apparently conceives that it will be necessary to maintain the same rate to its stations along the southwest bank of the Missouri which is maintained to the stations of the Soo on the northeast bank of that river. Its desire was to extend the Mandan rate to these stations. The Bismarck rate now applies at the points in question upon the Soo, and the Northern Pacific, to avoid the necessity of reducing its own rates 1 cent per 100 pounds, requested the Soo to make that advance, which was done.

The traffic manager of the Soo testified that the former rate had been voluntarily established by his company and was reasonably satisfactory; that it would not have been advanced but for the request of the Northern Pacific; that in his opinion the old rate was low and the advanced rate not unreasonable.

The advances covered by this proceeding are not of great consequence, either to the railways or to the shipping public, but the case must be disposed of as though they were of greater importance. In our opinion the carriers have not fairly sustained the burden which the statute casts upon them of justifying these advances in their rates. We are of the opinion that the old rates were just and reasonable and ought not to be exceeded for the future and that the advanced rates are unjust and unreasonable.

An order will be issued accordingly.

25 I. C. C.

No. 4114.

J. CHARLES McCULLOUGH

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 1952.

Submitted February 5, 1911. Decided October 7, 1912.

Rates for the transportation of sunflower seed in carloads from Belle Rive, Dahlgren, and Delafield, Ill., to Cincinnati, Ohio, not found to be unreasonable. Complaint dismissed.

O. M. Rogers for complainant.

William G. Dearing for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a dealer in seeds, with principal place of business at Cincinnati, Ohio. In a petition filed May 15, 1911, he alleges that during the months of October and November, 1909, he shipped 12 carloads of sunflower seed from Belle Rive, Dahlgren, and Delafield, Ill., to Cincinnati, for the transportation of which defendant Louisville & Nashville Railroad Company collected charges based upon a rate of 21.2 cents per 100 pounds. The Louisville, Henderson & St. Louis Railway Company did not participate in the carriage of this traffic. Complainant contends that the rate charged is in violation of the fourth section of the act, and that it is unreasonable to the extent that it exceeds 15 cents per 100 pounds. Reparation and the establishment of a reasonable rate for the future are asked.

The testimony is that 90 per cent of the sunflower seed grown in the state, consisting of approximately 60 carloads per annum, is produced in the immediate vicinity of the points of shipment named; that the crop is valuable and is mainly used to mix with poultry foods; and that a carload of the seed is worth about \$900.

The Louisville & Nashville Railroad runs from St. Louis to Cincinnati via Mount Vernon, Ill., Evansville, Ind., Guthrie and Louisville, Ky. The distance from Mount Vernon to Cincinnati, via the route shipment moved, is 473 miles. There are several routes via the lines of other carriers from Mount Vernon to Cincinnati, all of which are shorter and more direct than that of the Louisville &

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Nashville. The several points of origin of this traffic are located upon the Louisville & Nashville, intermediate Mount Vernon and Cincinnati and between Mount Vernon and Enfield, Ill., two junction points taking the fifth-class rate of 15 cents, minimum weight 30,000 pounds, to Cincinnati, while the rates from these shipping stations are based upon the sixth-class rate of 6.2 cents from Dahlgren and Belle Rive to Mount Vernon, and 6.6 cents from Delafield to Enfield, plus the competitive rate of 15 cents to destination. The defense is that the force of competition demands an equalization of rates with the short lines at the junction points on traffic destined to Cincinnati; that the class and commodity rates applying from such points in this territory to Cincinnati are established upon this basis.

The distances from the respective points of origin to Cincinnati via the Louisville & Nashville and via the short line are as follows:

To Cincinnati from—	L. & N., miles.	Short line, miles.
Belle Rive, Ill.	462	311
Dahlgren, Ill.	466	307
Delafield, Ill.	453	309

The Louisville & Nashville Railroad Company filed application No. 1952 for relief from the provisions of the fourth section with respect to rates on sunflower seed from Mount Vernon to Cincinnati, and after full hearing, and upon consideration of the testimony adduced, it does not appear that the short-line rates are violative of the fourth section or that there is any complaint as to the reasonableness of such rates between the points concerned herein. The route of the Louisville & Nashville from the points of origin to Cincinnati is circuitous, and the rate from the intermediate points to Cincinnati bears a reasonable relationship to the rate obtaining at Mount Vernon, the more distant competitive point.

Taking into consideration all the transportation conditions here involved, it is the finding and conclusion of the Commission that the rates charged complainant on sunflower seed from Belle Rive, Dahlgren, and Delafield to Cincinnati are not shown to have been unreasonable.

For the reasons stated, orders will be entered relieving the Louisville & Nashville Railroad Company from the operation of the fourth section, with respect to rates on sunflower seed from Mount Vernon to Cincinnati, and dismissing this complaint.

25 I. C. C.

FOURTH SECTION APPLICATIONS NOS. 542 ET SEQ.
IN THE MATTER OF LUMBER RATES FROM THE SOUTH
TO OHIO RIVER CROSSINGS.

Submitted March 27, 1912. Decided October 14, 1912.

Carriers transporting lumber from various points of production in the south to the Ohio River, violating in some instances the rule of the fourth section, ask to be allowed to continue the making of higher rates at the intermediate points. Upon the facts disclosed by the record, *Held*:

1. A carrier originating traffic in a lower group and carrying it upon its way to the Ohio River through a higher group, disregarding the fourth section, should, upon the circuitous-route principle, be accorded relief.
2. With respect to gum and cottonwood lumber the petition of the Illinois Central should be granted in case of all those points where competition with the Mississippi River or some other stream emptying into that river is possible.
3. Rates from lumber-producing territory on the Nashville, Chattanooga & St. Louis and the Tennessee Central lines to river crossings should be allowed to depart from the fourth section rule, because of water competition.
4. Whatever local rate is made for the transportation of yellow-pine lumber by the direct line from points of production in the south to the Ohio River crossings and points north should not be exceeded to any intermediate point upon that line. The applications of carriers for leave to continue charging the higher intermediate rates on such traffic will be denied.
5. The application of the Illinois Central with respect to its rates upon pine lumber will be granted, except in the two instances named in the report.
6. To the extent that water competition justifies departures from the fourth section at and from Memphis, relief should be granted, but this Commission can not, upon the mere suggestion that this is a water-competitive point and without further showing, grant unlimited relief from the rule of the fourth section. Relief not granted to Trotters Point, Memphis, or Brockport upon the present record.
7. Carriers interested in these applications will be given until December 1, 1912, in which to file with the Commission a statement showing the exact relief in detail to which they consider themselves entitled under the terms of this opinion. Upon receiving such statements appropriate orders will be issued.

R. Walton Moore, M. P. Callaway, and G. W. Gwathmey for Nashville, Chattanooga & St. Louis Railway, Southern Railway Company, and other carriers.

Nelson W. Proctor and Albert S. Brandeis for Louisville & Nashville Railroad Company.

C. P. Littlepage for St. Louis & San Francisco Railroad Company.

A. Pope for Georgia & Florida Railway.

Stiles Hopkins for Atlanta, Birmingham & Atlantic Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The carriers which transport lumber from various points of production in the south to the Ohio River violate in some instances the rule of the fourth section, and have filed applications asking to be allowed to continue the making of higher rates at the intermediate points. These applications were set down for hearing, upon which the carriers offered testimony in justification of their applications. Afterwards they were heard in argument to the same import, and still later filed an extended written brief. Having carefully considered both the facts shown in evidence and the arguments urged orally and in writing, the following conclusions have been reached:

The lumber produced in the south is, for the most part, yellow pine, but gum and cottonwood are found to a considerable extent upon the Mississippi River, and hardwood is grown in large quantities in Kentucky and Tennessee. The questions involved differ in case of the different carriers and different sections, but they may be thrown into general heads.

We shall not here attempt to state in detail the order which should be made with respect to each carrier, but simply to announce the principles upon which these details are to be worked out:

1. Rates from the yellow-pine producing territory of the south to the Ohio River are stated in groups. Thus, a rate of 14 cents applies to Cairo from a certain defined territory; a rate of 16 cents from other territory; and of 18 cents from still another group. These rates have been examined and approved by the Commission in the past, and no question is made now as to their justice and reasonableness, either absolutely or relatively.

It sometimes happens that a carrier originates traffic in one group and carries it upon its way to the Ohio River through a higher group. Thus, the Louisville & Nashville Railroad transports lumber from the mill at A through B to the Ohio River. A is located in the 14-cent group; B is in the 16-cent group. It follows that in transporting this lumber from A the rule of the fourth section is disregarded.

This is, in essence, the case of a circuitous route. No reason appears why, in instances of this kind, relief should not be granted. Fourteen cents is a reasonable rate from A; 16 cents is a reasonable rate from B, considering the general location of these two groups with respect to all lines of transportation. The mere circumstance that the Louisville & Nashville Railroad in handling traffic from A to the Ohio

River hauls it through B, is no reason why that company should be debarred from engaging in this business nor why the just relation between these rates should be disturbed. An order of relief will be granted in such cases.

2. The testimony discloses several instances where water competition is relied upon in justification for the higher intermediate rate.

(a) The Illinois Central system maintains rates upon gum and cottonwood lumber from various points of origin to the Ohio River crossings which are lower than corresponding rates to intermediate points. For this two justifications are offered.

It is said, in the first place, that these kinds of lumber are of an inferior grade, must be sold at a much lower price than yellow pine, oak, etc., and will not therefore bear as high a transportation charge. This may well justify a lower rate upon these two kinds of lumber than is applied to the transportation of the higher grades, but it is no excuse for maintaining a higher intermediate rate. The necessity for the lower charge to enable gum and cottonwood to compete with yellow pine at the intermediate point is exactly the same as at the more distant point. This justification is not, in our opinion, a sufficient one.

This petitioner asserts, in the second place, that in the great majority of instances these lower rates to the more distant Ohio River crossings are compelled by water competition. Cottonwood grows in enormous quantities along the banks of the Mississippi River and of other navigable streams which empty into that river. Practically all of that lumber, either in the form of logs or of manufactured lumber, is accessible to the Mississippi River and can be transported by water to these Ohio River crossings. The testimony leaves no doubt that this lumber does move by water between these points in large quantities and at a lower rate of transportation.

No attack is made upon the rates to intermediate points, which upon inspection seem to be reasonable, and we are therefore of the opinion that with respect to this gum and cottonwood lumber the petition of the Illinois Central should be granted in case of all those points where competition with the Mississippi River or some other stream emptying into that river is possible. No attempt is here made to designate by name these points. The testimony leaves no doubt as to what they are, and they will be given in detail in the order granting relief.

(b) At three points, Straders, Ponchatoula, and Independence, La., extensive mills are located, at which great quantities of this gum and cottonwood lumber are manufactured. These mills are not directly upon the Mississippi River, but the logs which they cut are accessible to it. Rates from these points are lower than from points of origin farther north, the excuse being that this is necessary

to divert this lumber from exportation through New Orleans to northern markets and thereby to obtain for the Illinois Central the long haul.

While there is force in the contention of the petitioner, we are of the opinion upon all the facts that the situation does not justify a lower rate from these mills considered as originating points. We do think, however, that in view of their location they may properly be regarded as water competitive points with respect to this gum and cottonwood lumber, and may make lower rates to the Ohio River crossings than are contemporaneously maintained to intermediate stations.

(c) The situation presented by the application of the Nashville, Chattanooga & St. Louis Railway is largely peculiar to itself and should be considered separately.

The main line of that system extends from Atlanta, Ga., to the Mississippi River at Hickman, Ky. That portion of the line from Atlanta to Chattanooga is known as the Western & Atlantic and is operated under lease as a part of the system. What little lumber originates between Chattanooga and Atlanta is mostly pine, although small quantities of hardwood are produced, and this part of the system may be treated along with other carriers whose lumber traffic is mainly from the pine forests of the south.

The Nashville, Chattanooga & St. Louis proper lies north and west of Chattanooga, Tenn., and Gadsden, Ala. While small quantities of pine originate upon these lines, the bulk of the timber is hardwood.

An examination of the rates under which lumber moves to the Ohio River discloses many instances in which the fourth section is violated, usually as to points of origin, but sometimes also as to points of destination. The justification alleged by this carrier for these departures from the rule of that section is for the most part water competition.

The main line of the Nashville, Chattanooga & St. Louis running from Chattanooga west touches the Tennessee River at Chattanooga and crosses it at Bridgeport and again at Johnsonville, and touches the Cumberland River at Nashville. At Hollow Rock the road branches in three directions, one branch reaching the Ohio River at Paducah, another the Mississippi River at Hickman, and a third the Mississippi at Memphis.

The Nashville, Chattanooga & St. Louis joins in rates with numerous other carriers to all the Ohio River crossings. Rates on lumber, whether altogether by its own line or in conjunction with its connections, from the points of origin at and near the Cumberland and Tennessee Rivers just mentioned to the various Mississippi and Ohio River crossings, are lower than from intermediate points.

Thus the rate from Chattanooga to Cairo, which may be selected as a typical Ohio River crossing, is 18 cents. Going west from Chattanooga the line of the railway runs in close proximity at many points to the Tennessee River, and while the rate increases it no where exceeds $17\frac{1}{2}$ cents, which is the rate from Bridgeport. After leaving the river at Bridgeport the rate increases to $19\frac{1}{2}$ cents, which is the highest rate maintained upon the main line between Chattanooga and Cairo. At Nashville the rate is 10 cents and at Johnsonville 8 cents.

The reality of the competition afforded by the Tennessee and Cumberland rivers is beyond question. Large quantities both of logs and lumber are taken down these streams. The going water rate on lumber from Chattanooga to Cairo is 10 cents.

An apparent anomaly occurs at Bridgeport. This station lies west of Chattanooga, both upon the Tennessee River and upon the railway. Traffic from Chattanooga to Cairo, whether by rail or by water, must pass through Bridgeport. Nevertheless, we find at that point a rail rate which is $4\frac{1}{2}$ cents higher and a water rate which is 3 cents higher than from Chattanooga.

The explanation given for this was that rail competition between Chattanooga and the Ohio River forced down the rate at Chattanooga so that both the rail and water rate were lower from that point than from Bridgeport, where this additional rail competition did not exist. However this may be, there can be no question as to the reality of the water competition, and we are inclined to the opinion that in this case the defendant should be allowed to meet that competition by such rates as it has in fact established from these river crossings.

No complaint is made as to the reasonableness of the intermediate rates, and while those rates are certainly ample, being much higher, distance considered, than those on yellow pine which are in effect from points further south, we are not prepared upon the record to condemn them as unreasonable, but upon the contrary assume upon the strength of the testimony of the petitioner and for the purposes of passing upon this petition at this time that they are reasonable. It follows, therefore, that with respect to these points of origin, considered as points of origin in comparison with other originating points, the relief prayed for should be granted.

In some instances these water competitive points are also destination points and take as such lower rates than intermediate destinations. In such instances, where water competition exists between the point of origin and the point of destination, it should be recognized and an order of relief issued.

A branch line of the Nashville, Chattanooga & St. Louis extends from Decherd, Tenn., through Elora, Tenn., to Gadsden, Ala. Lower

rates are made from Gadsden than from intermediate points north, which are sought to be justified upon the ground of competition with other railroads at Gadsden and at Attalla, which is in close proximity to Gadsden.

While there may be points of destination to which the line of the defendant from these points of origin would be markedly circuitous and with respect to which higher rates may properly be maintained at the intermediate station, still with respect to Ohio River crossings generally this can hardly be true of the line of the petitioner and its connections. We find nothing in this record which fairly justifies a departure from the fourth section as to Gadsden and Attalla or points in that vicinity considered as points of origin; that is, the rates from these points should not be lower than from points upon the line of the petitioner north, through which the traffic from these points is hauled.

This same branch crosses the Tennessee River near Gunter'sville and extends along that river in close proximity as far as Hobbs Island. These points are manifestly water competitive and should receive the same treatment which has been indicated for similar points upon the main line.

This same branch, which leaves the main line at Decherd, divides at Elora, one line running northwest through Fayetteville to Columbia. The Louisville & Nashville passes through Columbia to Nashville and the petitioner asserts that the competition of that road compels a lower rate from Columbia and points affected by the Columbia rate than from intermediate points.

This position is well taken. Nashville lies nearly due north of Columbia and the Louisville & Nashville connects the two points by an almost direct line. Upon the other hand the Nashville, Chattanooga & St. Louis runs southeast from Columbia to Elora, then northeast to Decherd, and then northwest to Nashville, the distance by this circuitous route from Columbia to Nashville being several times the distance by the direct route. The relief prayed for in this instance should be granted.

Another branch line extends from Tullahoma northeast to Ravenscroft. The rate from Ravenscroft and points in that vicinity to Cairo is 18 cents, while from intermediate points upon the branch line it is 19 and 20 cents. The excuse for the higher intermediate rate is that the Tennessee Central runs in the vicinity of Ravenscroft, and that lumber manufactured from logs, cut in territory between the end of this branch line and the Tennessee Central, may be transported to the Ohio River by either the petitioner or its competitor. It is said that in order to obtain this traffic it is necessary to make a lower rate from the extreme end of the branch than is made from points nearer the main line.

Without holding that cases may not arise where cross-country competition of this kind might furnish a valid justification for a departure from the long-and-short-haul rule, we are of the opinion that the situation presented by this record is too indefinite to afford a basis for granting relief.

3. The case presented by the application of the Tennessee Central Railway is somewhat peculiar. This line extends in a generally east and west direction from Hopkinsville upon the west to Harriman upon the east.

At Harriman it connects with the Louisville & Nashville, and at Emory Gap, a few miles west of Harriman, with the Cincinnati, New Orleans & Texas Pacific. At Hopkinsville it connects with the Illinois Central and at Clarksville and Nashville with the Louisville & Nashville. It will be seen, therefore, that traffic originating at almost all points upon this line may reach the various Ohio River crossings either by moving toward the west or by moving toward the east.

Carthage Junction is about the center of this line, and rates to northern points are the highest from this locality. Going either east or west, rates decline, and, evidently, this system of rate-making is correct, since the distance to the destination point decreases both toward the east and toward the west.

It often happens, however, that this carrier in the handling of its business, for purposes and reasons of its own, desires to haul traffic which originates west of Carthage Junction through Carthage Junction east to a connection with the Louisville & Nashville at Harriman, or the Southern Railway at Emory Gap, and, conversely, it may desire to handle traffic originating to the east of Carthage Junction through that point west to a connection with the Louisville & Nashville at Nashville or Clarksville, or the Illinois Central at Hopkinsville. In either case the traffic would pass through a point taking a higher rate than the point of origin. The Tennessee Central by its application asks to be relieved from the fourth section under the conditions above explained.

In our opinion that relief should be granted to the extent of meeting the situation as stated. No complaint is made against the rates of the Tennessee Central. Those rates are manifestly constructed upon the proper plan and will be assumed in this proceeding to be just. This being so, it is entirely immaterial to the shippers upon that line whether traffic is handled by the Tennessee Central through its eastern or its western junctions. Since no injury is inflicted upon the patrons of that road by allowing it to handle its business in whatever direction it elects, so long as it is handled upon a just and reasonable rate, the relief prayed for will be granted.

4. Lumber originating south of the Ohio River, particularly southern pine, is consumed in very large quantities in territory immediately north of that river, and it often happens that the fourth section is violated, not only as to delivering points south of the Ohio River but also as to delivering points north. This grows out of the fact that rates to territory north of the river are usually made by combination upon some river crossing, and that, while the rate is made upon the lowest combination, the traffic frequently moves through some crossing upon which a higher combination would result.

X is a point of production in the south. The Illinois Central extends from X to Cairo, and the rate is 14 cents. The Louisville & Nashville runs from X to Louisville, and the rate is 16 cents. A and B are points north of the Ohio River, A being the more westerly of the two. The rate by the Big Four Railway from Cairo to A is 6 cents, which, added to the 14 cents, makes a through rate via the Illinois Central and the Big Four to A of 20 cents. The Baltimore & Ohio Southwestern extends from Louisville through B to A. Its rate from Louisville to B is 6 cents and to A 8 cents. Hence the rate from X to B via the Louisville & Nashville and the Baltimore & Ohio Southwestern is 16 cents plus 6 cents, or 22 cents. The rate via this route to A would be 16 cents plus 8 cents, or 24 cents.

Now, it is evident that if the Louisville & Nashville and the Baltimore & Ohio Southwestern handle lumber from X to A, they must meet the rate of 20 cents made by the Illinois Central and the Big Four, and this is being done at the present time, although in handling the traffic from X to A it passes through B, which takes a rate of 22 cents.

The Baltimore & Ohio Southwestern and the Louisville & Nashville ask to be relieved from the inhibition of the fourth section by being permitted to continue the higher intermediate charge at B, and this request should be granted. The rate from X to A is properly 20 cents. This rate is that to which its location entitles it. The rate to B is properly 22 cents, that being the rate which its location gives it. If B obtains its lumber from X at the rate to which it is fairly entitled, it is in no way unduly discriminated against if the Baltimore & Ohio Southwestern and the Louisville & Nashville are permitted to carry the same lumber to A for a charge of 20 cents. This is but the converse of the situation outlined in the first paragraph and is simply the case of the circuitous route meeting the rate of the direct line.

5. The specific rates previously dealt with in this report have been those upon hardwood originating mainly in Tennessee, and upon gum and cottonwood originating upon the lines of the Illinois Central. The bulk of the lumber traffic from the south to the Ohio River is yellow pine, and the rates upon which this traffic moves are usually

lower to the Ohio River crossings than to intermediate points south of the river. The right to maintain these higher intermediate charges at points of destination south of the river is the matter of widest application involved in these petitions, and was the subject mainly considered in testimony and upon the argument.

Yellow-pine lumber is produced along the northern shore of the Gulf of Mexico all the way from the Atlantic Ocean to central Texas. The quality of the lumber is the same and the cost of production substantially the same. If lumber from a given section is to be used at a given point it must move upon as low a rate as from other pine-producing regions.

Cairo lies just about due north of the middle of this pine-producing territory from east to west. The Illinois Central and the Mobile & Ohio lead directly from the pine forests in the south to and through Cairo to the north. From both east and west lines of transportation from this yellow-pine territory converge upon Cairo.

Since, as already suggested, Georgia pine must move to Cairo at substantially the same charge as Mississippi pine, if it is to compete there with the pine from Mississippi, the result has been the establishment of rates lower than would otherwise exist from territory east and west to Cairo.

North of the Ohio and east of the Mississippi River great quantities of yellow pine are consumed, and the rate to this consuming territory is generally constructed, as already noted, by combination upon some Ohio River crossing. The rate to the crossing and from the crossing are added together and the lowest result establishes the through charge from point of origin to destination. Since Cairo occupied a more highly competitive position with respect to all this territory both east and west of the Mississippi River than any other Ohio River crossing, it came to pass that the rate to Cairo was the lowest and that rates to most of the territory north of the Ohio River were made by combination on Cairo.

These competitive conditions in process of time produced a series of rates to the various Ohio River crossings which bore a definite relation to one another. Beginning with a rate of 14 cents to Cairo, there was a gradual increase until 21 cents at Cincinnati was reached.

The petitioners assert that these competitive conditions resulted in rates to the various Ohio River crossings which were lower than they otherwise would have been or than they might properly have been, and that this justifies the charging of higher rates at intermediate points.

In 1903 carriers advanced their rates from all southern points to all Ohio River crossings by 2 cents per 100 pounds. This advance was attacked by shippers and was finally, after an exhaustive in-

vestigation, condemned by the Commission, which ordered the carriers to cease and desist from the advance. *Tift v. S. Ry. Co.*, 10 I. C. C., 548; *Central Yellow Pine Asso. v. I. C. R. R. Co.*, 10 I. C. C., 505.

In these cases the Commission held that the rates which had previously been in effect and which are now in effect were just and reasonable for the service performed, and this holding was sustained by the Supreme Court of the United States. 206 U. S., 428, 441. Now, if these rates are *per se* just and reasonable for the greater service involved in the long haul to the Ohio River, how can it be said that higher rates to intermediate points are just and reasonable for the less service of the shorter haul or that their maintenance should be allowed in the face of the prohibition of the fourth section?

Nor are we able to see any ground upon which the higher intermediate charge can be justified. The defendants earnestly contend that the competitive conditions at the Ohio River justify the maintenance of lower rates to that territory. Disregarding for the moment water competition, which does, in our opinion, justify the higher intermediate charge in cases where it is operative, the only competition at the Ohio River is that of markets; the desire of the various carriers to transport into that territory from the points of origin which they serve the lumber there consumed.

Without holding that competition of this sort may not be considered, for it should be, or that instances do not exist where this sort of competition alone may justify a departure from the fourth section, or even that in days gone by conditions at the Ohio River may not possibly have excused the lower rate, we hold upon a comprehensive view of the entire situation that to-day these conditions afford no reason for a departure from the rule of the fourth section. In so far as the Ohio River itself, by affording a means of transportation, gives to these cities upon its banks a lower rate than would otherwise be obtainable, they should be accorded the benefit of their location; but we can find in this record no reason to-day why these Ohio River communities should obtain this lumber, not tributary to the rivers of which they may claim the advantage, at a less transportation charge than the communities which lie south of them and therefore nearer the points of production. The applications of carriers for leave to continue charging the higher intermediate rates, in so far as they are based upon the competitive conditions above referred to, will be denied.

In denying these applications, however, two observations should be made:

(a) We have held in the first subdivision, and again in the fourth subdivision, of this opinion that a circuitous line might meet the
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rate of the direct line without reducing correspondingly its intermediate charges. There may be circuitous lines leading from a given point of origin to a given destination upon the Ohio River which for that reason may properly make a higher charge to intermediate destination points south of that river. No such cases have been called to our attention in the course of this investigation. If there are such cases they should receive the same treatment south of the river as north.

(b) These lumber rates to the Ohio River are used in combination with rates from the river north in determining the through charge from point of origin to final destination. They are mainly important both to the carrier and to the shipper as parts of a through rate which, with respect to most traffic moving under them, they really are. It is possible that the Commission in holding the advance of 2 cents above referred to to have been unreasonable may have considered mainly this aspect of the case.

In some instances to-day carriers maintain a proportional rate to certain Ohio River crossings applicable to business for beyond which is lower than the local rate. Under the holdings of this Commission such a rate can not be compared with an intermediate local rate to show a violation of the fourth section. We express no opinion now upon the propriety of such proportional rates. All we now hold is that whatever local rate is made by the direct line from points of production in the south to these Ohio River crossings and points north must not be exceeded to any intermediate point upon that line.

It is interesting to notice that the loss in revenue to the petitioners, consequent upon a reduction of these intermediate charges, in accordance with this holding would be insignificant. The several petitioners were required to show such losses in each individual case, and from the statements filed it appeared that the sums ranged from a few hundred dollars to not exceeding six or seven thousand dollars. The Louisville & Nashville is probably more affected than any other petitioner. It has filed a supplemental statement which includes, as we read it, items not affected by this decision but which, even so, only aggregates \$10,388.42.

The fact that the loss in revenue will be slight is no reason why we should deny these petitions provided the right to maintain the higher charge is clear. But this form of discrimination is one which feeds upon itself. Once allow the propriety of its existence and the continual tendency is to multiply and increase. It was the manifest intent of Congress to put a stop to this form of discrimination in so far as that could properly be done, and it ought to be snuffed out in its infancy before property rights and commercial conditions have intervened to render the thing aimed at difficult of accomplishment.

6. The Illinois Central does not, according to the testimony upon the hearing, violate the fourth section with respect to its rates upon pine lumber, except in two instances.

It operates trains partly over its own line and partly by lease of trackage rights from Birmingham, Ala., and its rate on lumber of all kinds from that territory is lower than from intermediate stations. The alleged justification for this is that other lines from Birmingham afford the direct route and that it simply meets the rates of these lines.

This situation apparently falls within the rule laid down in the first sub-division of this opinion and the relief prayed for should be granted.

Trotters Point is a small station upon the Illinois Central just across the Mississippi River from Helena, Ark., and the Illinois Central makes from that point rates on lumber, including pine, to Cairo, which are lower than those from stations upon both sides of Trotters Point. The excuse here is that the Missouri Pacific, which connects Helena with Cairo, establishes a rate of 10 cents, and that the same rate is made by the petitioner from Trotters Point in order that lumber manufactured at Helena may be taken across the river and carried to Cairo in competition with the Missouri Pacific.

The distance from Helena to Cairo by the Missouri Pacific is substantially the same as from Trotters Point. The cost of transporting lumber is certainly no greater upon the Illinois Central than upon the Missouri Pacific. Nothing appears in this record to show why the 10-cent rate has been established by the Missouri Pacific, nor is there any evidence bearing upon the reasonableness of the higher rates of the petitioner from stations near to Trotters Point, except the general declaration that all its lumber rates are reasonable. Upon this showing the prayer for relief should be denied.

Let it be noted that the petitioner does not base its claim for relief either upon the fact that water competition necessitates the low rate from Helena or from Trotters Point. If this be the fact, a different question would be presented.

It appears from an extended statement filed by the Illinois Central subsequent to the hearing and the argument that relief is also asked with respect to Memphis, Tenn. Memphis is upon the Mississippi River and the Commission knows from previous investigations that lumber of all kinds can be and is transported from that point to various other points upon the Mississippi River and to various points upon the Ohio River. To the extent that this water competition justifies departures from the fourth section at and from that point, relief should be granted, but this Commission can not, upon the mere suggestion that this is a water competitive point and without further showing, grant unlimited relief from the rule of the fourth section.

The same observation applies to rates from Brockport, Ky., to various destinations upon the Ohio River which are for the first time brought to the attention of the Commission in the above statement filed by the Illinois Central Company. Brockport is upon the Green River and the Commission knows from its previous investigations that this stream is navigable. It seems altogether probable that some measure of relief should be granted, but a more extended showing must be made than a mere suggestion that this point is water competitive, made after the submission of the application for final determination.

Relief will not be granted with respect to Trotters Point, Memphis, or Brockport, upon the record as it stands, but the Illinois Central Company may, if it desires, apply within 15 days from the service of this opinion for leave to introduce further testimony as to these three points.

The various applications under consideration are general in their terms. None of them specify in detail the relief which is asked for. The Illinois Central alone, by its statement filed subsequent to the submission of the case, has pointed out the specific and definite relief which it asks.

It would be well-nigh impossible for this Commission, from an examination of the applications and tariffs of the various carriers interested, to determine in detail what relief is asked for or what should be granted upon the principles laid down in this opinion. We conceive that in the making of these fourth-section applications it is incumbent upon the carriers to point out in detail the exact relief for which they ask. Carriers interested in these applications will be given until December 1, 1912, in which to file with the Commission a statement showing the exact relief in detail to which they consider themselves entitled under the terms of this opinion. Upon receiving such statements appropriate orders will be drafted. Unless such statements are filed, or unless the applications are so amended by that date as to show in detail the specific relief to which each application refers, the applications will themselves be denied.

It is also possible that the Commission in deciding the questions presented by these applications may have overlooked some situation which ought to have been disposed of, but is not covered by the propositions affirmed in this opinion. In that event the interested petitioner may, within 15 days from the service of this opinion, make application to the Commission for a further consideration of such matters.

INVESTIGATION AND SUSPENSION DOCKET No. 99.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF LIVE STOCK FROM POINTS IN THE STATE OF NEW MEXICO TO KANSAS CITY, MO., AND BETWEEN OTHER POINTS.

Submitted October 2, 1912. Decided October 14, 1912.

Proposed rates on live stock from points in Texas, New Mexico, and Colorado in some instances found unreasonable and reasonable rates prescribed for the future, and in other instances found reasonable and allowed to become effective.

S. H. Cowan for Cattle Raisers' Association of Texas, and American National Live Stock Association.

A. W. McLaren for Nelson Morris & Company.

E. W. Skipworth for Sulzberger & Sons Company.

T. J. Norton, Robert Dunlap, and James L. Coleman for Atchison, Topeka & Santa Fe Railway Company.

M. L. Bell, W. F. Dickinson, and S. H. Johnson for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; El Paso Southwestern Company; and Trinity & Brazos Valley Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The rates here under consideration are those on live stock from numerous points in Texas and New Mexico and from a few points in Colorado to Kansas City, Mo. The suspended tariffs are Southwestern lines' tariff No. 7-U, I. C. C. No. 913; Chicago, Rock Island & Pacific Railway, I. C. C. No. C-9296; Colorado & Southern Railway, supplement No. 5 to I. C. C. No. 1046; and Atchison, Topeka & Santa Fe Railway, supplement No. 23 to I. C. C. No. 5419.

Southwestern lines' tariff No. 7-U is filed by F. A. Leland, as agent for interested carriers, and embraces all rates under consideration from points in the state of Texas. These points are mainly located in what is known as the panhandle and are with few exceptions covered into a single group. The rate applicable from these points to Kansas City at the present time is 31½ cents per 100 pounds upon

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beef cattle and it is proposed by the tariff under suspension to uniformly advance this rate $1\frac{1}{2}$ cents per 100 pounds, making the new rate 33 cents.

In what is known as the *Oklahoma Live Stock & Packing House Products case*, 22 I. C. C., 160, the Commission established a mileage scale applicable to the transportation of live stock from points in Texas, Oklahoma, and New Mexico to Fort Worth, Tex., Oklahoma City, Okla., and Wichita, Kans. The application of this mileage scale to Kansas City from these points in the panhandle of Texas would produce on the average a rate somewhat exceeding that of 33 cents, which the carriers propose to establish. The substantial justification urged by the carriers is that they should be allowed to apply from these points in Texas the mileage scale found reasonable by the Commission in the case above referred to.

In *Cattle Raisers' Association of Texas v. M., K. & T. Ry. Co.*, 13 I. C. C., 418, the Commission disapproved of certain advances from Texas points to Kansas City and other markets of consumption and established as reasonable certain rates which had been in effect previous to the advances. The Commission in that case had before it the whole state of Texas, together with Oklahoma and certain points in Colorado. These rates from Texas and Oklahoma were mostly stated in groups and no question was made as to the relation between these different groupings. The rate from the panhandle of Texas to Kansas City was then and ever since has been $31\frac{1}{2}$ cents.

In disposing of the *Oklahoma case* the Commission distinctly stated that the mileage scale there prescribed was not fixed as an ideal scale applicable in all cases but merely as what seemed to be just for the territory in which it was to be made operative. This scale was to apply to Fort Worth, Oklahoma City, and Wichita, mainly from points south and west. Generally speaking, as the distance from these stations increased, territory was penetrated where traffic became light and cost of operation heavy. It would by no means follow that a scale which was just for 500 miles from Oklahoma City west through the panhandle and into New Mexico would be just for 500 miles from Kansas City into the panhandle.

The rate from the panhandle which these defendants desire to advance is compared by them with the rate from Fort Worth. It is probably true that while the average distance from the Fort Worth group is slightly less than from these stations in the panhandle the rate is 2 cents higher. But it should be noted that the rate from Fort Worth exceeds that which would result from the application of our mileage scale to the short-line distance and that no proposition has been made by these carriers to reduce the rate from that territory to Kansas City in consequence.

Comparing these rates from the panhandle with those from Fort Worth upon the south we find that they are somewhat higher for similar distances, but if the comparison be made with Colorado points to the north the contrary is true, since those rates are distinctly lower, mileage considered, than these under consideration from Texas points.

It is also urged that rates to Kansas City now in effect are too low as compared with rates to Wichita, which is nearly in line with the direct haul to Kansas City.

Rates to Kansas City are stated upon the group basis, while those to Wichita from these same points are upon the mileage basis. It must of necessity be true that in case of many individual stations a proper relation between Wichita and Kansas City would not result. But the mileage scale which was applied to the *Oklahoma case* must be considered as a whole and upon the average we are not satisfied that the rates now in effect unduly discriminate in favor of Kansas City as against Wichita. At any rate Wichita itself is not before us seeking to establish that claim.

The rates established by this Commission in the *Cattle Raisers' case* were, after protracted litigation, approved by the courts. The mere fact that the scale prescribed by this Commission in the *Oklahoma case*, when applied to Kansas City from these points in the panhandle of Texas, makes a rate lower than that which was found reasonable in the original case, does not justify the advance, nor do the other facts which are incidentally alluded to but not much insisted upon by the carriers. In our opinion the rates proposed by Southwestern lines' tariff No. 7-U, F. A. Leland, agent, I. C. C. No. 913, are unjust and unreasonable. We are of the further opinion that the present rates are just and reasonable and ought not to be exceeded for the future, with the exception of those from the stations in Texas named below, from which the following rates to Kansas City may be charged.

Upon the line of the Chicago, Rock Island & Pacific: Ontario, 32 cents; Adrian, 32½ cents; Glen Rio, 33 cents; Middlewater, 32 cents; Romero, 32½ cents; Bravo, 33 cents.

Upon the line of the Atchison, Topeka & Santa Fe: Friona, 32 cents; Adrian, 32½ cents; Glen Rio, 33 cents; Middlewater, 32 cents; Farwell, 35 cents.

In our opinion the above rates are just and reasonable and ought not to be exceeded for the future.

With respect to rates from points in New Mexico the situation is quite different. While some of these rates were in effect and passed upon in the *Cattle Raisers' case*, they were not especially considered in that connection.

These New Mexico rates are apparently constructed upon no uniform theory. They are neither group rates nor mileage rates. The relative charges upon different kinds of live stock are not consistent. The carriers properly insist that these rates should be revised.

Supplement No. 23 to Santa Fe tariff, I. C. C. No. 5419, names rates from points upon the lines of that system to Kansas City. An examination of the rates applicable to cattle and calves shows comparatively few advances and one or two reductions. The proposed rates under suspension are in all cases less, and usually distinctly less, than would result from the application of the mileage scale of the Commission. To this the branch leaving the main line at Rincon is an exception, but traffic upon this branch is extremely light. The rates there proposed are the same as those now in effect, which are somewhat higher in all instances than would result from the mileage scale.

Upon the whole we are of the opinion that the proposed rates contained in this tariff for cattle and calves are just and reasonable and should be allowed to become effective.

The proposed rates upon sheep and goats in single-deck cars are in most cases reductions from those now in force, and usually very material reductions. They are in all cases less than would result from the Commission's Oklahoma scale. In our opinion they are just and reasonable and should be permitted to take effect.

The proposed rates on sheep and goats in double-deck cars are usually advances, and sometimes material advances, over those now in effect. With one or two exceptions they do not exceed the rates which would result from the application of the Commission's scale. Upon the whole, considering the country in which this traffic originates, we are of the opinion that these proposed rates for sheep and goats in double-deck cars are not unreasonable and should be allowed to become effective.

The proposed rates on hogs are for the most part advances over the rates now in effect, although in some instances they work a reduction. They are in all instances distinctly higher than would result from the application of the Oklahoma scale. In our opinion these rates are unjust and unreasonable. We are of the opinion that the rates proposed in this tariff for the movement of sheep in single-deck cars would be just and reasonable for the movement of hogs in single-deck cars and that these rates ought not to be exceeded for the future.

Tariff Chicago, Rock Island & Pacific Railway, I. C. C. No. C-9296, covers rates from points in New Mexico upon the Rock Island system and its connections. The rates upon beef cattle named in this tariff are for the most part slight advances over those now in effect. They

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in no case exceed those of the Oklahoma scale, and in most cases are distinctly lower. In our opinion they are just and reasonable and should be allowed to take effect.

The proposed rates on sheep and goats in single-deck cars are in all cases much lower than those now in effect. Those upon double-deck cars are in some instances lower and in some instances higher than the present rates. With three or four exceptions they do not exceed the Oklahoma mileage scale. In our opinion they are reasonable and should be suffered to go into effect.

The suspended rates of this tariff on hogs are in some cases reductions from, and in other cases advances over, the present rates. As a rule they are substantially those rates which would result from the application of our mileage scale. In our opinion these rates are just and reasonable and should be allowed to become effective.

Colorado & Southern tariff, I. C. C. No. 1046, names rates upon that line from a few points in New Mexico and Colorado just west and north of the Texas line. These rates at present are uniformly 31 cents per 100 pounds. It is proposed to leave nine stations at the present rate, to advance one station to 32 cents, and nine stations to 33 cents. The distance from these stations on the average is greater than from the panhandle and we are inclined to hold that the proposed advances are not unreasonable. This tariff apparently involves only rates on beef cattle. Such rates are named to Kansas City, St. Louis, and Chicago, but no question is made except as to the Kansas City rate. In our opinion this tariff should be permitted to become effective.

An order will be entered in accordance with the foregoing opinion.
25 I. C. C.

No. 4456.
VIRGINIA MANUFACTURING COMPANY
v.
ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Submitted April 13, 1912. Decided October 8, 1912.

Rates on small berry and fruit baskets from Suffolk, Va., to points in New England, New York, New Jersey, and Pennsylvania not found to have been unreasonable.

Charles D. Drayton for complainant.

Henry Wolf Bikelé for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation engaged in the manufacture of fruit and berry baskets at Suffolk, Va., alleges in its petition, filed October 2, 1911, that the rates charged by defendants for the transportation of "baskets, veneer, for small fruit, nested solid, without handles or covers, in bundles or crates," from Suffolk to interior points in the New England and north Atlantic states, are unreasonable. The establishment of reasonable rates and reparation are asked.

The complainant maintains an establishment at Suffolk for the manufacture, among other articles, of quart and pint baskets for packing small fruits; these baskets are the only commodity of complainant's manufacture involved in this proceeding. They are made of gum timber, the cheapest of forest products, and are necessarily a low-priced commodity that must be marketed at a narrow margin. Being without handles or covers they nest compactly, and are packed in crates that contain 1,000 baskets and weigh 120 pounds. A standard 36-foot car carries 150 of these crates, weighing 18,000 pounds.

A market for these baskets is found in Florida and Georgia, but the demand is limited, particularly when there is a bad fruit year in Georgia; local competitors do most of the business in Carolina. In the north Atlantic states there is considerable demand. In the immediate neighborhood of Suffolk there is practically no demand, and therefore the Suffolk establishment must depend very largely upon railroad transportation in marketing its output. At the present time 60 to 75 per cent of the output is sold in the northern states.

Suffolk is 18 miles southwest of Norfolk, and shipments to northern points move through the latter point, thence via the New York, Phila-

delphia & Norfolk and the Philadelphia, Baltimore & Washington Railroads to Philadelphia, whence they reach destinations via other lines. Shipments originating at Norfolk when for northern points are subject to the official classification which rates these berry baskets at fourth class. Suffolk, however, is in southern classification territory where these baskets are carried at class-A rates to which the sixth class of the official classification is most nearly equivalent. These baskets move from Suffolk under a commodity rate made up of the fourth-class rate from Norfolk to the northern destinations with an arbitrary of 2 cents to cover the haul from Suffolk to Norfolk. The local rate for this initial haul is 5 cents per 100 pounds, and the initial carriers receive this entire local rate as their division of the through rate, the shrinkage of 3 cents being absorbed by the lines north of Norfolk. A combination of the class-A rate to Norfolk and the fourth class beyond would be 3 cents higher than the present commodity rates.

Complainant asks that the class-A rates be extended through from Suffolk to the various points of destination in the north Atlantic States. This question is largely one of classification. In its petition complainant attacked the rates in force as unreasonable, but no material evidence in support of this allegation was presented.

Complainant's contention for a reduction of the rating by two classes is based upon three grounds: (1) The class-A rate was in force on shipments of berry baskets from Suffolk to these northern points for a number of years prior to 1907; (2) class-A rates are applied at the present time on shipments of berry baskets from points in southern territory other than Suffolk to these northern points; and (3) that class-A rates are applied at the present time on shipments of other commodities from Suffolk to these northern points.

Defendants presented the historical development of the rate on these baskets under the official classification, showing that for 10 years after 1891 they were rated first class; in 1901 the fifth-class rate was applied, and the next year it was raised to fourth class. This rate was maintained for the succeeding 10 years, with the exception of an advance to third class in 1905, which was withdrawn the next year. Defendants admitted that on traffic moving into official classification territory from the southern territory, the general rule is that the southern classification governs; but, where there is a wide variance between the two classifications, or where there is a large volume of traffic in official classification territory that would be affected, exceptions to this rule are established. It would be manifestly unfair, defendants argued, to hold shippers in the official classification territory up to the higher rate while allowing shippers from

other territories to come in and compete with them at a lower rate. Such exceptions have been made in the case of fruit and vegetables, fresh meat and dressed poultry, and iron and steel articles.

Briefly stated, the situation appears to be as follows: The complainant has an establishment at Suffolk capable of producing 40,000 crates of baskets annually; at present the output is one-half of this amount. Of the actual output 5,000 crates go to Florida and Georgia and 15,000 to northern points. Competition of factories more favorably located and limited demand prevent an increase of the southern sales; there is competition in the north from factories also more favorably located, those in New York and Vermont being the most effective competitors. If complainant could come into the New York and New England field at the sixth-class rate, it claims that it would be able to make a profit on the 15,000 crates now sold without profit, and also to develop a market for 20,000 crates not now manufactured.

Complainant contends that for many years prior to 1907 these berry baskets moved to these northern points under the class-A rate. We have already seen that during these years shippers in the official classification territory were charged fourth-class or higher.

The tariffs now in force carry class-A rates on berry baskets to these northern points from southern classification territory outside of Suffolk. The record is insufficient to enable us to determine whether or not this constitutes discrimination. The rates are carried in a general tariff, and it does not appear whether there is now, or ever has been, any movement under these rates to the northern points under consideration. If there has been, it does not appear where the initial points are located; whether the circumstances and conditions are similar; or whether the defendants in this proceeding have taken part in such transportation.

As stated, the general rule on shipments moving from southern classification territory into official classification territory is that the southern classification shall govern, and complainant contends that this rule should be followed in this case. The reasons assigned by defendants for the exception as to berry baskets moving from Suffolk are: (1) the haul in southern classification territory is only 18 miles, while in the official classification territory it is several hundred miles; it would be unreasonable to let the initial line having only an 18-mile haul fix the rate for the entire movement; (2) the variance in rates is so wide that discrimination would be established were southern shippers given class-A rates, while official territory shippers pay the fourth-class rate; and (3) the volume of traffic of this commodity in official classification territory is too large when compared with that moving from Suffolk to justify a reduction of the rate in official classification territory to sixth class. We think there

is little force in the first of these, but the other reasons seem sufficient to justify the exception. Complainant has failed to show that the rates complained of are unduly discriminatory or prejudicial, and the complaint herein must be dismissed. An order will be entered accordingly.

GEORGE M. SPIEGLE

v.

SOUTHERN RAILWAY COMPANY.

Submitted December 8, 1911. Decided October 14, 1912.

1. A transit charge is a regulation or practice affecting the rate of which the Commission has jurisdiction, and under this it is competent for this body to inquire whether such charge is excessive. *National Wool Growers' case*, 23 I. C. C., 151, cited and followed.
2. Upon consideration of the facts disclosed by the record; *Held*, That defendant's transit charge of 2 cents per 100 pounds for treating lumber at Johnson City, Tenn., is unreasonable and should not exceed 1½ cents per 100 pounds.

M. C. Rhone and Blair, Drayton & Hillyer for complainant.
Claudian B. Northrop for defendant.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The complainant is engaged in the lumber business at Philadelphia, Pa., and in connection with that business operates, either directly or through stock ownership, a mill and lumber yard at Newport, Tenn. Newport is located upon the Southern Railway between Johnson City, Tenn., and Asheville, N. C., and the complainant has for many years enjoyed the privilege of shipping lumber into his mill at Newport, dressing, grading, assorting, and otherwise treating it at that point, and finally sending it forward to destination at a rate which is determined by adding to the through rate from point of origin to final destination a certain sum for the transit privilege.

For some years previous to January, 1909, this transit charge had been at Newport, Johnson City, and apparently all other points upon the Southern Railway uniformly 2 cents per 100 pounds, but at that time, owing to certain competitive conditions at Johnson City, the Southern reduced this charge to \$2 per car. On May 15, 1910, the charge of \$2 was advanced to 1 cent per 100 pounds, with a minimum of \$3 per car.

The complainant, conceiving that he was discriminated against by the making of a higher transit charge at Newport than was applied at Johnson City, filed his complaint with this Commission, alleging that the amount charged him for the transit privilege was excessive, and that from the imposition of a higher rate at Newport than at Johnson City an undue preference arose.

Upon investigation of this complaint the Commission held that conditions did not justify the maintenance of a higher charge at Newport than at Johnson City and ordered the defendant to cease and desist from maintaining such higher charge. *Spiegle v. S. Ry. Co.*, 19 I. C. C., 522.

Effective January 16, 1911, for the purpose of complying with this order of the Commission, the defendant advanced its transit charge at Johnson City to 2 cents per 100 pounds, thereby making this tariff the same at Johnson City as at Newport. The complainant now files this complaint, alleging that the advanced charge at Johnson City is unjust and unreasonable, and that is the only question before us.

The manifest purpose of this complaint is to give to the complainant the benefit of the order in the previous case, since if the defendant be compelled to reduce its rate at Johnson City it must also reduce its rate, in obedience to our former order, at Newport.

It appears that the complainant in the past has been permitted to take lumber from points east of Asheville to Newport, dress it at Newport, and send it back through the point of origin to eastern destinations. For this a charge of from 3 to 5 cents per 100 pounds has been made, and one of the matters incidentally referred to during the testimony and very much discussed at the argument was the amount of these charges.

This matter is not properly involved in the present proceeding. The practice referred to necessarily includes a back haul, for which an additional charge may properly be made. Nor can it be seriously contended that the amount charged is excessive in consideration of the length of this back haul and the service performed.

The real claim of the complainant in this respect seems to be, as gathered from what transpired upon the argument, that he had formerly been permitted to back-haul lumber from these points in this manner for a less sum than is now charged, and that Johnson City, Bristol, and perhaps other points still enjoy a more favorable rate for this service.

The only matter put in issue by the complaint is the reasonableness of the transit charge of 2 cents at Johnson City. The prayer of the complaint is that the Commission shall find that this charge of 2 cents is excessive and shall order the defendant to cease and desist from charging more than 1 cent per 100 pounds for that privilege.

Upon the hearing the examiner called attention to the fact that these back-haul charges were not in issue, and practically no evidence was introduced upon that subject.

If in fact Newport is discriminated against in favor of Johnson City and other points in the making of these back-haul charges, then that subject should be presented by proper complaint, unless it has been already dealt with in the former case which was decided solely upon the ground of discrimination. Whether it was so disposed of is not here considered or decided. The only question before us, and the only question here decided, is upon the reasonableness of the 2-cent charge.

The defendant suggests that we have no jurisdiction to deal with this question, and in confirmation of this view refers to several of our decisions. It is true that the Commission held, previous to the Hepburn amendment of 1906, that the privilege of milling in transit was one which the carrier might or might not accord, at its option, provided no discrimination was effected, and several expressions can be found in the opinions of the Commission subsequent to 1906 which indicate the same view after the passage of that amendment. But it was finally held in a recent case that transit in its various forms was a regulation or practice affecting the rate of which this Commission had jurisdiction, and under that holding it is competent for us to inquire whether this charge is excessive. *In the Matter of Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151.

The Southern Railway showed at the opening of its testimony that at all points upon its system except at Johnson City and at Bristol its uniform charge for this transit privilege had been for some time previous to January, 1911, 2 cents per 100 pounds, and that when the order of the Commission was issued requiring it to make no distinction between Newport and Johnson City it determined to advance the rate at Johnson City even though it might thereby lose the competitive business at that point. It appears, however, that immediately after the advance by the defendant other lines interested also advanced their transit charge both at Johnson City and at Bristol to 2 cents per 100 pounds, so that to-day this is the uniform charge at all points upon the Southern Railway system both by the Southern Railway and by its competitors. The Southern Railway insists that this charge is reasonable for the service performed and that to compel it to reduce that charge at Johnson City upon the ground that it is excessive would of necessity require it to make a corresponding reduction at all other points upon its system, thereby working to it a serious loss of revenue.

The claim is that the charge is inherently unreasonable and while it might perhaps be that the cost of performing this service would

differ at different points so that a different charge might be made at one point than at another, still there is no fact in this record which indicates that the cost of the service is less at Johnson City than at Newport, or at other points upon the Southern, and it is probably true that a reduction of this charge at Johnson City in this proceeding would require a corresponding reduction at other points. The question is therefore an important one to the Southern Railway and to other railways operating in that territory.

A preliminary question is, Upon what basis shall the reasonableness of this charge be determined? The Southern Railway, which under the statute assumes the affirmative of the issue, asserts that an important element in this inquiry is the value of the service to the shipper. It urges that the opportunity of assembling this lumber at some central point from the small mills where it is cut, the re-drying, assorting, manufacturing, and finally sending forward at the through charge from the point of origin is worth to the complainant much more than 2 cents per 100 pounds. As evidence of this it shows that at 84 different points upon its system this transit privilege is being used and that no protest has been entered by any shipper except the complainant against the reasonableness of the 2-cent charge.

It further suggests that if the complainant did not enjoy the benefit of this privilege he would be compelled to transport his rough lumber to Philadelphia for the purpose of manufacture, or that the defendant would obtain its full local rates if the lumber were hauled into an intermediate point and there dressed. Since lumber shrinks in dressing and manufacturing from 15 per cent to 60 per cent, and sometimes even more, the defendant urges that by extending this privilege it loses a large amount of additional business.

Upon the other hand, the complainant shows that this lumber must be manufactured at the point of origin, since it could not stand the transportation charge if taken to the consuming destination in the rough; that therefore it will be dressed either at the mill where it is cut or at some intermediate point; and that, comparing these two systems of handling, the defendant now has the benefit of its local rate upon a certain amount of rough lumber shipped into the dressing point which it would not have if the lumber were prepared for market at the point where it was sawed and so delivered to the railroad for the first time in its finished state.

The complainant further testified that this charge was so great that he could not do business under it in competition with the direct shipment from the mill where the lumber was sawed; that he had already ceased to handle certain kinds of lumber under this privilege and would be obliged to still further curtail his operations unless the charge were reduced.

Without determining how far these and other elements may properly be considered in other cases, it has seemed to us that here very little importance is to be attached to such considerations. The chief inquiry here would seem to be, What is the fair cost of this extra service to the carrier? Instances may arise where the single item of cost would not be controlling, but in the case before us that appears to be the fundamental question.

We proceed to inquire, therefore, what the extra service involved is and what the fair cost of that service.

The lumber, having been loaded at the originating station, would be transported directly through upon the through rate if no transit intervened. When that transit is permitted the carload of lumber must be taken out of the train and switched to the mill of the complainant. When later the lumber is ready to go forward a car must be provided for loading and the loaded car must be switched from the mill and placed in the train. Two switch movements are of necessity involved. There may also be the movement of the empty car upon which the lumber was carried to the mill and the movement of a second empty car upon which the lumber is to be loaded out, but in actual operation the car upon which the lumber reaches the mill, when unloaded, can usually be used for an outloading at the same point.

The charge for switching made by the Southern Railway is in some cases as low as \$1.50 and in some cases as high as \$3. The usual charge is about \$2 per car, and this is perhaps the average charge in the country as a whole. Assuming that the cost of the service does not exceed the charge, this element of expense would equal \$4 per car.

In addition to the above switching movements there is also the use of the car. Two days are allowed for the unloading of the loaded car and two days again for the loading of the empty car, making a possible four days in addition to what a through movement would necessitate. The per diem paid by one railroad to another at the present time is 35 cents per day, at which the four days would aggregate \$1.40.

It was insisted by the defendant that another element of expense to it was found in the fact that frequently, in order to permit transit, the car must be taken from a through train and placed in a local train for the purpose of getting it to the mill, and that it must again be taken from the mill in a local train to some concentrating point and there placed in the through train, but it is impossible to assign any definite figure to this item when present.

It will be seen, therefore, that if the use of the car for fully four days be reckoned and the ordinary switching charge be assumed to be reasonable the expense to the defendant would be \$5.40 per car.

There is still another item of expense in that an additional amount of clerical work is involved. A new waybill must be made out and additional bookkeeping is required. No estimate as to the actual cost of this was submitted, and there is nothing upon the record nor within the knowledge of the Commission from which any definite sum can be named. The amount would not be great, but still would be substantial.

There is also the expense of policing these transit shipments, which is made necessary by the recent rulings of the Commission, and which, while not large in amount, is still another item which must be given a place in determining the actual cost to the defendant.

The testimony shows that when the complainant located at Newport the charge for this transit privilege was \$5 per car, and originally privileges of this kind seem to have been usually stated not by the 100 pounds but by the carload. There is a certain propriety in charging for services of this kind by the carload since the expense to the defendant is approximately the same whatever the weight of the car. It does, however, cost something more to handle a heavy car than a light one, and perhaps the risk of damage to the car and to other cars is materially increased in proportion to its weight. It is now a very general practice, and seems to be becoming more general, to name a charge for privileges of this kind by the 100 pounds, and we are not disposed to criticize this method, provided the charge itself is reasonable. If named by the 100 pounds manifestly the loading of the car would be an important factor in determining the reasonableness of the rate.

The carload minimum for lumber under the tariffs of the defendant is 30,000 pounds, and the minimum transit charge is \$6, or 2 cents per 100 pounds upon the minimum. In practice the actual loading very much exceeds the minimum. The complainant insisted that the average loading of his cars would be 50,000 pounds, and while the defendant did not concede an average loading of lumber quite as heavy as this, it did practically admit that it would exceed 40,000 pounds. It is probable that 2 cents per 100 pounds would yield on the average \$9 per car.

Not much help can be derived from the decisions of the Commission upon this subject, mainly because we have never assumed to pass upon the reasonableness of such charge. In *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.*, 11 I. C. C., 90, we held that the additional cost to the defendant, when hay was stopped at the warehouse of the complainant in East St. Louis, graded, and sent forward, did not exceed by more than 1 cent per 100 pounds the cost when the hay passed directly through without stopping, and reparation was awarded upon that basis. In suit to enforce the order the Supreme

Court of the United States held that the defendant was entitled, in consideration of the granting of this privilege, to not only the additional cost, but to a fair profit upon the transaction. 214 U. S., 297. Subsequently the Commission, in view of the decision of the Supreme Court, held with respect to this same situation that a charge of $1\frac{1}{2}$ cents per 100 pounds, yielding upon a minimum of 20,000 pounds, \$3 per car, would be just. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.*, 19 I. C. C., 533. It will, however, be seen by an examination of the opinions that the additional expense was less at East St. Louis than that involved in the ordinary transit privilege, owing to the peculiar circumstances under which traffic was interchanged at that point.

In the *Wool, Hides, and Pelts Case*, *supra*, $2\frac{1}{2}$ cents per 100 pounds was fixed as a reasonable transit charge. The minimum loading of wool is 24,000 pounds, which in actual practice is somewhat exceeded. That allowance would yield between \$6 and \$7 per car.

Upon a consideration of all the facts we are of the opinion that a charge of 2 cents per 100 pounds for this transit privilege is unreasonable and that the charge ought not to exceed $1\frac{1}{2}$ cents per 100 pounds. An order will be issued accordingly.

25 I. C. C.

Nos. 3086 and 3818.

NATIONAL LUMBER EXPORTERS' ASSOCIATION ET AL.
v.
KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted March 22, 1911. Decided October 7, 1912.

1. Rates on lumber from points in Louisiana to New Orleans for export not found to be unreasonable or unduly discriminatory.
2. Rate of 20 cents per 100 pounds charged for the transportation of staves from Rust and Hatfield, Ark., to New Orleans for export found unreasonable to the extent it exceeded 18 cents, the rate contemporaneously in effect on lumber. Reparation awarded.

L. Palmer, J. Craig McLanahan, and E. McClure Rouzer for complainant.

S. W. Moore, T. Alexander, and F. H. Moore for Kansas City Southern Railway Company, Texarkana & Fort Smith Railway Company, and Loring & Western Railway Company.

R. E. Milling for Louisiana Railway & Navigation Company.

James C. Jeffery and Herbert J. Campbell for St. Louis, Iron Mountain & Southern Railway Company.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.

W. F. Braggins for Texas & Pacific Railway Company.

Evans Browne for Kansas City Southern Railway Company.

George Wesley Smith for intervenors.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is an association incorporated under the laws of the state of New York and maintains its principal office in Baltimore, Md. Its members are engaged in manufacturing and exporting lumber, staves, and other forest products. The original petition in case No. 3086, filed February 1, 1910, on behalf of certain of its members located in the state of Louisiana, attacks the export rates on lumber and staves from points in Louisiana, Texas, and Arkansas on the Kansas City Southern, Loring & Western, and St. Louis, Iron Mountain & Southern railways to New Orleans, alleging that said rates are unreasonable and discriminatory. It is alleged that the rates exacted by the Kansas City Southern Railway on staves from

points on its lines to New Orleans for export are unreasonable and discriminatory in that said rates exceed the rates on lumber from and to the same points. A rate of 10 cents per 100 pounds on lumber and staves from all points in the territory involved to New Orleans for export is asked.

Petitions of intervention, praying reparation, were filed on behalf of the Friedlaender & Oliven Company; Xiques, LeMore & Company; Illingworth, Ingham & Company; Kern Company, and Phil. I. Adams. At the hearing the petitions of Phil. I. Adams were withdrawn.

The petition in No. 3818 was filed on behalf of the K. & P. Lumber Company and seeks reparation on shipments of lumber from Zwolle, La., to New Orleans for export. It involves the same issues as in No. 3086 and was really intended as an intervening petition to the latter case, but was filed too late to be incorporated in that docket.

The Friedlaender & Oliven Company, in its intervening petition, asks for reparation on shipments of staves to New Orleans for export from Rust and Hatfield, Ark., points on the Kansas City Southern Railway, alleging that the rates exacted on such shipments were unreasonable and discriminatory in that they exceeded the rates contemporaneously in effect on lumber. At the time of shipments said defendants exacted rates on staves 2 cents per 100 pounds higher than on lumber, but since the filing of the Friedlaender & Oliven complaint, said defendant has voluntarily eliminated the 2-cent differential making staves take the same rate as lumber.

The rates on lumber and staves to New Orleans for export from points on the Kansas City Southern Railway and Texarkana & Ft. Smith Railway are as follows:

	Cents.
Texarkana, Texas Group.....	15.5
Myrtis, Louisiana Group.....	15
Shreveport.....	14
Many.....	13
Pickering.....	12
De Quincy.....	10

From the above points traffic moves to New Orleans via Shreveport, La., or Lake Charles, La., the junction points of the Kansas City Southern Railway with connecting lines, via one of four routes, as follows: First, from Shreveport via the Vicksburg, Shreveport & Pacific Railway; the Alabama & Vicksburg Railroad; and the New Orleans & Northeastern Railroad; second, via the Texas & Pacific Railway, when originating at points north of Shreveport; third, via the Louisiana Railway & Navigation Company; fourth, from Lake Charles the route is via the Louisiana Western Railroad and Morgan's Louisiana & Texas Railroad & Steamship Company. In April,

1910, there was added a fifth route, via De Quincy, La., and the New Orleans, Texas & Mexico Railway. The latter road and the Vicksburg, Shreveport & Pacific Railroad and the Alabama & Vicksburg Railway are not made defendants.

At the time the complaint was filed the above rates applied on lumber, and the rates on staves were in each instance 2 cents higher, but effective March 28, 1910, the differential between staves and lumber was removed by making the stave rates the same as on lumber.

The Loring & Western Railway is about 20 miles long, and connects with the Kansas City Southern Railway at Loring, La. The rate on staves from points on this line to New Orleans for export at the time was 20 cents as compared with a rate of 16 cents via the Kansas City Southern Railway from Loring. Since the complaint was filed the joint rates from Loring to New Orleans have been canceled. The Loring & Western formerly filed tariffs with the Commission, but on July 15, 1911, they were canceled.

Stations on the St. Louis, Iron Mountain & Southern Railway from which lumber rates applied to New Orleans were divided into groups.

Group 1 rates applied from points on what is known as the H. C. A. & N. and the M. H. & L. divisions of the St. Louis, Iron Mountain & Southern Railway in Louisiana, including the Eudora-Gilbert branch. The H. C. A. & N. division connects with the Texas & Pacific Railway at Alexandria, La. It runs north from Alexandria 143 miles to the boundary line between Louisiana & Arkansas. The M. H. & L. division connects with the Texas & Pacific Railway at Ferriday, and runs north to Eudora, Ark. Milliken is the last station on this branch in Louisiana. The Eudora-Gilbert branch extends from Calvit, La., north to Eudora, a distance of 37 miles.

Group 2 rates applied from stations on the Memphis branch east of Wynne and Helena branch south of Wynne, Ark. (except Helena), and the M. H. & L. division in Arkansas and also on what is known as the L. R. M. R. & T. division south of Noble Lake, Ark., and the H. C. A. & N. division in Arkansas, to the Mississippi River, and the Hamburg & Western, which has since lost its identity, having been merged in the St. Louis, Iron Mountain & Southern Railroad.

The rates on staves and lumber from group 1 to New Orleans for export is 14 cents per 100 pounds; from group 2, 15 cents per 100 pounds, on both domestic and export.

It is alleged that the rates on staves and lumber for export from points on the H. C. A. & N. and the M. H. & L. divisions of the St. Louis, Iron Mountain & Southern Railway in the state of Louisiana to the port of New Orleans are unreasonable and discriminatory in that they exceed the domestic rate of 10 cents per 100 pounds on

the same commodities; that both the domestic and export rate on staves and lumber from points on the so-called Eudora-Gilbert branch of said road are unreasonable and discriminatory in so far as they exceed 10 cents per 100 pounds; and that the rate of 14 cents per 100 pounds charged for the transportation of staves and lumber to New Orleans for export from points in group 1 on said road are unreasonable and discriminatory as compared with the rate of 15 cents on such traffic from points in group 2 on said road.

The rate to New Orleans for local delivery on staves from all points on the Kansas City Southern Railway in Louisiana and from the H. C. A. & N. division of the St. Louis, Iron Mountain & Southern Railway is 10 cents per 100 pounds. This rate is fixed by the railway commission of the state of Louisiana. Traffic destined to New Orleans for local delivery from points on the Eudora-Gilbert branch of the St. Louis, Iron Mountain & Southern Railway in Louisiana becomes interstate by reason of the fact that such traffic must pass through Eudora, Ark. The 10-cent intrastate rate, therefore, is not applicable from this branch. The rates on both domestic and export lumber and staves from the latter branch are each 14 cents per 100 pounds. Prior to the orders of the Louisiana railroad commission fixing the domestic rate at 10 cents the rates on both domestic and export traffic from the points involved to New Orleans were the same.

Complainant offered as exhibits a number of statements relative to the importance of the lumber traffic in Louisiana and through New Orleans for export. These statements show that Louisiana is the largest lumber-producing state in the south; that the total value of lumber shipped from New Orleans for export is over \$10,000,000 annually; that from Gulf ports the value of the lumber shipped to foreign ports is over \$29,000,000 annually and from Atlantic ports \$13,000,000. In other words, New Orleans ships nearly as much as all the Atlantic ports combined. These figures do not include coast-wise shipments for domestic consumption. A further statement of exports by months was offered showing that the movement of lumber through New Orleans to foreign ports was continuous and regular.

Staves are either sawed or split by hand. The sawed stave operator fells the tree, cuts it into 36-inch logs, quarters the logs, and the resulting bolts are the material for the staves. The split stave operator develops a partially finished stave product between 33 inches and 60 inches in length, from the tree with an ax. It was testified that the split stave operator secures within 20 and 25 per cent of the amount of material from a tree that the sawed stave operator secures. Staves are exported in the rough and finished abroad. While there is some conflict in the testimony as to the relative value of lumber and staves, it appears that the value of the

class of staves exported is about the same as ordinary mill-run lumber. Staves load as heavily as lumber, and the testimony shows that there is practically no risk in their transportation. They are loaded in closed cars, and while lumber may be loaded on open cars, the general practice in the territory involved appears to be to load it in closed cars. About 90 per cent of the lumber and staves shipped to New Orleans is exported.

Complainant claims that where the question involves, as it does here, shipments from the heaviest producing territory in the country through one of the largest lumber-exporting ports in the country, it is entitled to lower rates than elsewhere; and if its members are charged a higher rate in proportion to the haul, such rate is unreasonable. It is further contended that the rates from the territory involved to New Orleans for export are unreasonable in comparison with the rates from the same territory for local delivery to New Orleans, and in comparison with other rates to New Orleans for export, and to other points.

Defendants generally deny that the rates complained of are unreasonable or discriminatory. They contend that the 10-cent domestic rate is unreasonably low and unremunerative, and is not a voluntary rate; that export traffic is more expensive than domestic traffic; and that a comparison of the rates from the territory involved to New Orleans for export favorably compares with the rates from the same territory to other destinations, and with the rates from other points to New Orleans for export.

The table following shows the present rates on lumber and staves, and distances from points on the Kansas City Southern Railway, and Texarkana & Fort Smith Railway to New Orleans for export, via Lake Charles, La., and Shreveport, La.

From Kansas City Southern and Texas & Fort Smith Railway stations.	Rates in cents per 100 pounds.	Mileage.	Via—
De Quincy, La.....	10	241	Lake Charles, La., and Southern Pacific (L. W.-M. L. & T. Rys.).
Port Arthur, Tex.....	10	308	Do.
Wasey, La.....	12	243	Do.
Pickering, La.....	12	284	Do.
Coopers, La.....	13	286	Do.
Many, La.....	13	327	Do.
Loring, La.....	14	335	Do.
Forbing, La.....	14	311	Shreveport and L. R. & N.
Sheehan, La.....	15	313	Do.
Myrtis, La.....	15	343	Do.
Rodessa, La.....	15½	346	Do.
Texarkana, Tex.....	15½	378	Do.

The table following contains comparisons of the rates on lumber and staves to New Orleans for export, with the rates to Port Arthur and Galveston, the other Gulf ports reached by the Kansas City Southern Railway and its connections.

	Rate.	Distance.	Rate per ton per mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
From Zwolle to—			
New Orleans via Shreveport.....	14	366	7.65
New Orleans via Lake Charles.....	14	339	8.2
Port Arthur.....	7	164	8.6
Galveston.....	14	221	12.6
From Juanita to—			
New Orleans via Shreveport.....	12	452	5.8
New Orleans via Lake Charles.....	12	263	9.5
Port Arthur.....	6	79	15.2
Galveston (on hardwood).....	12	135	17.8
Galveston (on yellow pine).....	10	135	14.8

Comparisons of rates on staves prior to reduction of staff rates to lumber rates:

	Rate.	Distance.	Rate per ton per mile.
	<i>Cents.</i>	<i>Miles.</i>	<i>Mills.</i>
From Zwolle to—			
New Orleans via Shreveport.....	16	366	8.74
New Orleans via Lake Charles.....	16	339	9.4
Port Arthur.....	10.8	164	12.8
Galveston.....	16	221	14.4

The above figures are representative of the general situation as to the shipping points complained of. The rates per ton per mile are in all instances lower than the rates per ton per mile to Port Arthur and Galveston.

Tables filed in the record showing the actual movement of lumber from points on the Kansas City Southern Railway and Texarkana & Fort Smith Railway involved in the complaint to New Orleans, show the average per ton per mile earnings were as follows:

From January 1, 1909, to April 1, 1910, to New Orleans, via Shreveport, on lumber 6.7 mills, on cooperage stock 7.8 mills; for the period from April 2 to October 31, 1910, inclusive, on lumber 7.5 mills, on cooperage stock 5.9 mills; via Lake Charles, for the period from January 1, 1909, to April 1, 1910, on lumber 7.8 mills, on cooperage stock 8.7 mills; and for the period from April 2, 1910, to October 21, 1910, inclusive, on lumber 7.8 mills, and on cooperage stock 7.2 mills. Tables of actual movement from the same points to Port Arthur show that from January 1, 1909, to April 1, 1910, inclusive, the average revenue per ton per mile on lumber was 12 mills, on cooperage stock 14 mills, on ties, posts, piling, and logs, 7.8 mills per ton per mile, and for the period from April 2, 1910, to October

31, 1910, on lumber 12 mills, on ties, posts, piling, and logs 7.8 mills, and on cooorage stock 9.3 mills.

The following tables filed by the St. Louis, Iron Mountain & Southern Railway show the distances from the nearest and farthest stations to New Orleans from the H. C. A. & N., M. H. & L., and the Eudora-Gilbert divisions of that road, and also the average distances to New Orleans from each division. The tables also show the revenue in mills per ton per mile derived from this traffic, based on both a 14-cent and a 10-cent rate:

STATIONS ON H. C. A. & N. DIVISION OF ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.

Station.	Distance to New Orleans, miles.	Rate per ton per mile in mills.	
		14-cent rate.	10-cent rate.
Alexandria (T. & P. junction).....	194	14.4	10.3
Niemeyer (last station in Louisiana on H. C. A. & N. division).....	337	8.3	5.9
Point situated halfway between Alexandria and Niemeyer.....	266	10.5	7.5

STATIONS ON M. H. & L. DIVISION OF ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

Ferriday (T. & P. junction).....	200	14	10
Milliken (last station in Louisiana on M. H. & L. division).....	305	9.1	6.5
Point situated halfway between Ferriday and Milliken.....	253	11	7.9

STATIONS ON EUDORA-GILBERT BRANCH OF ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.

Indian.....	348	8	5.7
Calvit.....	354	7.9	5.6
Point situated halfway between Indian and Calvit.....	351	7.9	5.6

It appears that on shipments moving on domestic bills of lading only the usual 48 hours free time for unloading is allowed at New Orleans, on local bills of lading marked "for export" 10 days free time is allowed, and on through export bills of lading an unlimited free time is allowed. No evidence was offered showing the average detention at New Orleans of cars containing through shipments, but instances were cited where cars were detained as long as 60 days. On foreign cars detained at New Orleans defendants are compelled to pay a per diem charge of 35 cents per day. Defendants argued that, in addition to being compelled to pay rental on cars detained at New Orleans, they are deprived of the services of such cars during such detention and lose the revenue that would accrue to them if the cars were in actual service. Rates on shipments for export and through shipments include cost of switching to ship side. Rates applicable on domestic traffic do not include cost of switching, and the

testimony shows that the additional charges on domestic shipments for switching to ship side make the total rate on domestic shipments when exported at New Orleans greater than the export rate. It thus appears that there is really no discrimination between the rates on export shipments and the rates on domestic shipments ultimately exported. While the record shows that ordinarily export rates are lower than domestic rates, it appears that this is due to competitive conditions between ports, and not to the fact that the cost of service in export shipments is less than on domestic shipments.

An examination of the tariffs on file with the Commission discloses that generally the rates involved compare favorably with the rates from other points equidistant from New Orleans. For instance, the rates from points in Mississippi, Tennessee, and Alabama on lines other than defendants' to New Orleans are as follows:

Rates on lumber and staves, carloads, to New Orleans, La., proper or for export.

From—	Lumber.	Staves.	Distance.
	Cents.	Cents.	Miles.
Shuqualak, Miss.....	12	12	286
Brooksville, Miss.....	12	12	273
Ardena, Miss.....	14	14	286
Muldon, Miss.....	15	14	308
Egypt, Miss.....	15	15	321
Tupelo, Miss.....	15	15	346
Corinth, Miss.....	16	15	356
Bethel, Tenn.....	17	15	420
Georgiana, Ala.....	12	12	289
Fort Deposit, Ala.....	12	12	286
Tyson, Ala.....	12	12	302
Helena, Ala.....	15	15	358
Warrior, Ala.....	15	15	439
Ollman, Ala.....	15	15	469
Wilhites, Ala.....	15	15	479

¹ Export rate 11 cents.

² Export rate 12 cents.

³ Export rate 13 cents.

Examination of the Kansas City Southern tariffs in force as far back as 1904 shows that there has been no change during that time in the lumber rates from points in question.

Prior to 1907 the rates from the H. C. A. & N. division of the St. Louis, Iron Mountain & Southern Railway were formerly 12 cents to Westwego, La., with an additional charge of 1 cent for carriage to New Orleans, when sent across to that place; that in 1907 the rates were raised to a flat rate of 14 cents to both Westwego and New Orleans when the shipments were intended for export, and this rate is now in force. Complainant intimates that this increase in rates was made to meet the reduction made in the local rates by the state commission. It does not appear, however, that the rates from the other points of origin on the St. Louis, Iron Mountain & Southern Railway involved in the complaint were also increased.

While there was testimony to the effect that there are fewer shipments of staves to New Orleans to-day than five or six years ago, it

appears that this is due to trade conditions rather than the freight rate. It is admitted that during the last several years the stave business has increased under the present rates. From an examination of all the facts of record we are of opinion that the present rates on staves and lumber have not been shown to be unreasonable or otherwise unlawful.

The intervening petition of Friedlaender & Oliven Company alleges that a rate of 20 cents per 100 pounds charged for the transportation of staves from Rust and Hatfield, points on the Kansas City Southern Railway, to New Orleans for export was unreasonable in that it exceeded the rate of 18 cents applicable to lumber between the same points.

On March 23, 1909, complainant shipped over the lines of the Kansas City Southern Railway and the Texas & Pacific Railway from Hatfield, Ark., to New Orleans for export one carload of oak staves weighing 74,100 pounds, on which freight charges were collected in the sum of \$148.20, at a rate of 20 cents per 100 pounds.

Between June 1, 1909, and February 24, 1910, complainant shipped over the lines of the Kansas City Southern Railway and Louisiana Railway & Navigation Company from Rust and Hatfield, Ark., to New Orleans for export 77 carloads of oak staves aggregating 4,208,200 pounds, on which freight charges were collected in the total sum of \$8,426.40, at a rate of 20 cents per 100 pounds. On one shipment, weighing 61,600 pounds, from Hatfield, June 22, 1909, in car M. L. & T. 14131, charges were collected in the sum of \$133.20. At the lawfully published rate of 20 cents per 100 pounds there is an overcharge of \$10 on the latter shipment.

For a number of years prior to September 15, 1904, the rate on staves from the points mentioned to New Orleans for export was 18 cents, the same as on lumber, but on that date the stave rate was increased to 20 cents, or a differential of 2 cents over lumber. On March 28, 1910, subsequent to the shipments complained of, the stave rate was again made 18 cents. Defendants justify the higher rate on staves on the ground that they are more valuable than lumber and that it has not been shown that the rate charged was unreasonable in itself. As hereinbefore stated, the testimony shows that the value of the class of staves exported is no greater than the ordinary mill-run lumber. We have heretofore held that the rates on staves should not exceed the rate on lumber of the kind from which the staves are manufactured. From the whole record we are of opinion and find that the rate charged was unreasonable to the extent that it exceeded the rate contemporaneously in effect on lumber. We further find that Friedlaender & Oliven Company made the shipments in accordance with the above statement of facts

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and paid charges thereon at the rates herein found to have been unreasonable; that said Friedlaender & Oliven Company has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rates above found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$866.46, which includes the overcharge above mentioned, with interest from March 8, 1910. An order will be entered accordingly. In view of the fact that the present stave rate has been in effect nearly two years, no order controlling the rate for the future will be made.

No. 4040.

BRISTOL DOOR & LUMBER COMPANY ET AL.

v.

NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted December 8, 1911. Decided October 14, 1912.

The milling-in-transit rates of defendants on lumber at Bristol, Va.-Tenn., found excessive and discriminatory. Reduction ordered and reparation awarded.

Walter E. McCornack for complainants.

Claudian B. Northrop for Southern Railway Company.

R. Walton Moore and *Charles J. Rixey, jr.*, for Norfolk & Western Railway Company, Virginia & Southwestern Railway Company, and Carolina, Clinchfield & Ohio Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The complainants are engaged in handling and manufacturing lumber at Bristol, Va.-Tenn., and in the course of their business avail themselves of the privilege of assorting, dressing, and otherwise treating in transit a portion of the lumber which they handle. The charge for this transit privilege was advanced in the spring of 1911 from 1 cent per 100 pounds to 2 cents per 100 pounds, and this complaint attacks the reasonableness of the advance.

The defendants originally named were the Norfolk & Western Railway Company, Southern Railway Company, Virginia & South-

western Railway Company, and Carolina, Clinchfield & Ohio Railway. The latter filed an answer stating it did not participate in the rate in issue and moved to be dismissed, which motion, with the consent of the complainants, was granted. The Virginia & Southwestern is a comparatively short line of railroad which is now owned and operated by the Southern through stock control, so that the only two defendants which need to be considered are the Southern and the Norfolk & Western.

This case grows out of the same general situation which gave rise to the *Spiegle case*, No. 3789, 25 I. C. C., 71. As stated in that opinion, the Southern Railway had for some time previous to the year 1909 made a uniform charge of 2 cents per 100 pounds for this transit privilege at all its stations, including Johnson City, Tenn., and Bristol. In January, 1909, owing to competitive conditions, as alleged by it, existing at these two points, the rate was reduced to \$2 per car, but subsequently advanced to 1 cent per 100 pounds.

In order to comply with the order of the Commission in *Spiegle & Co. v. S. Ry. Co.*, 19 I. C. C., 522, the original case, the Southern Railway on February 16, 1911, advanced its rate at Johnson City to 2 cents per 100 pounds. Subsequently, on March 1, 1911, it advanced the charge at Bristol, to 2 cents per 100 pounds, and this is the advance complained of as to the Southern.

The Norfolk & Western does not allow the manufacture or dressing of lumber in transit at any point upon its system except Bristol, but it has permitted drying and assorting in transit at various points. The traffic manager of that railroad testified that at the present time this latter privilege was accorded at 16 different stations upon his system, and that the uniform charge was 2 cents per 100 pounds and always had been at all stations except Bristol. He further stated that previous to 1909, the charge at Bristol had been 2 cents, but that owing to the same competition referred to by the Southern Railway that charge had during that year been reduced to \$1 per car, then advanced to \$2 per car, and still later on May 1, 1910, again increased to 1 cent per 100 pounds, with a minimum of \$3 per car.

When the decision of the Commission in the original *Spiegle case*, *supra*, was announced, some correspondence seems to have taken place between the various carriers interested, although it is strenuously denied that any suggestion of an agreement was made or that any understanding was ever reached. However this may be, effective February 16, 1911, the Norfolk & Western increased its rate from 1 cent to 2 cents per 100 pounds, and this is the advance complained of in the case of that company.

It will be seen, therefore, that the rate uniformly applied by these two companies at Bristol and all other points upon their respective

systems up to 1909 had for some years been 2 cents per 100 pounds, and the defendants earnestly contend that the so-called advance was in reality but a restoration of the former normal rate.

Both parties urge that conditions at Bristol differ from those at most stations. Upon the part of the railways it is shown that the mills of the complainants and the yards of the defendants are so located that the haul by the railway to the respective plants of the complainants varies from 1,000 to 9,000 feet. It is insisted that the service involved in according this transit privilege at Bristol is more expensive than at most other places owing to the much longer switch movement, and that the 2-cent charge is reasonable there, however it may be elsewhere.

Upon the other hand, it is pointed out by the complainants that owing to the location of the railway yards at Bristol the interchange of traffic between the defendant lines is necessarily expensive, and that the movement to the mill does not cost in most cases more than the movement from one railway yard to another. So, again, trains moving into or out of Bristol by either the Southern or Norfolk & Western are necessarily broken up or made up at that point, and the service of taking the car from the mills of the complainants and putting it into the train for the movement out is not, on the average, more expensive than it would be if the car were taken from the yard of one of these defendants.

We fail to find any substantial reason in this record why this transit charge at Bristol should properly differ from that at other points upon the lines of these defendants. As held by the Commission in the original *Spiegle case, supra*, in which we ordered the Southern Railway to maintain no higher charge at Newport, Tenn., than at Johnson City, this charge ought, in the absence of controlling reasons to the contrary, to be the same at all points, so that discrimination may not result between different localities.

It follows that the same considerations which influenced the decision in the previous case must control here. We are of the opinion that the carriers have not sustained the burden of justifying the advance to 2 cents per 100 pounds, and we are further of the opinion that 1½ cents is a just and reasonable rate to be charged for the future as a maximum, and it will be ordered accordingly.

The complainants pray for reparation, which will be granted as to all shipments coming within the statutory period upon the basis of 1½ cents per 100 pounds.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 113.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF NEW MILLING-IN-TRANSIT REGULATIONS AT CERTAIN STATIONS ON THE CHICAGO & NORTH WESTERN AND CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAYS.

Submitted July 18, 1912. Decided October 14, 1912.

The tariff under suspension herein limits the territory into which grain can be shipped from Milwaukee, when milled or treated in transit at that point; but the record shows that such tariff is liberal to Milwaukee as a milling and a grain-handling point. There is no reason why mills at Milwaukee should reach in competition with mills between Minneapolis and Milwaukee the great bulk of this intermediate territory, involving in most instances as such an arrangement does a long back haul, or its equivalent, from Milwaukee. Order of suspension vacated.

George A. Schroeder for Chamber of Commerce of Milwaukee, Wis.
O. C. Wright and *F. P. Eyman* for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The tariff under suspension is item 68-A in supplement No. 7 to I. C. C. No. 3762 of the Chicago, St. Paul, Minneapolis & Omaha Railway Company. The effect of this supplement is to restrict the territory into which grain purchased at Minneapolis and treated in transit at Milwaukee can be shipped. For an understanding of the point in issue reference should be made to two former tariffs of the North Western system.

Chicago, St. Paul, Minneapolis & Omaha I. C. C. No. 3282, effective July 15, 1908, established certain milling and cleaning-in-transit privileges at Milwaukee and other points intermediate between Minneapolis and Milwaukee, upon grain originating at Minneapolis. This tariff imposed a penalty of 2 cents per 100 pounds for the transit privilege, and contained the following provision as to back hauls:

No back haul will be allowed under this tariff, except when the transit station is off the main line between point of origin of the grain and transit destination to which grain was originally consigned, in which event the transit may be back-hauled to the nearest main-line station between the transit station and the destination of such transit.

The effect of this tariff was to place Milwaukee at a disadvantage in comparison with Minneapolis by 2 cents per 100 pounds upon all business handled under it, and also to restrict unduly, according to the claim of Milwaukee, the territory intermediate between Milwaukee and St. Paul upon the various lines of the North Western system to which this business could be handled.

For the purpose of correcting this situation, Chicago, St. Paul, Minneapolis & Omaha I. C. C. No. 3762, effective October 1, 1911, was filed. By this tariff the transit charge of 2 cents per 100 pounds was removed altogether and certain stations were named at which the transit privilege might be enjoyed, while certain other points were specified as destination points to which the grain might finally be sent. All destination points were available from all transit points, and the result was that Milwaukee, which was the most distant of the transit points, was under this tariff, as construed by both the shipper and the carrier, enabled to handle grain under the transit privilege into practically all territory lying between Minneapolis and Milwaukee. For example, grain could be hauled from Minneapolis to Milwaukee, milled or cleaned at Milwaukee, and then again hauled 223 miles from Milwaukee to Marshfield for 10 cents per 100 pounds. If the commodity was coarse grain, treated in transit at Milwaukee, the charge for this service would be only $7\frac{1}{2}$ cents per 100 pounds, plus 2 cents penalty, these being the reshipping rates from Minneapolis.

The North Western representative stated upon this hearing that it had not been the intention of that company to extend this transit privilege to all this territory, and that the rates which resulted were unduly and extravagantly low. The original purpose was, according to testimony of the North Western, to name certain stations at which the transit privilege might be exercised in case of grain coming from Minneapolis and to define the territory into which the product might be shipped when milled or treated at each of these transit points. The tariff under suspension does this, the effect being to very much limit the territory into which grain can be shipped from Milwaukee, if milled or treated in transit at that point.

In the past the tariffs of the North Western have named the same territorial limits into which the product might be sent whether milled or cleaned in transit at Milwaukee. The last tariffs filed attempt to observe this same rule, but the milling-in-transit item in the tariff has gone into effect without objection, while that which permits cleaning or other treating in transit has been suspended by this proceeding.

Without here describing the territory to which the cleaning-in-transit privilege formerly applied, or that to which under the new tariff that privilege will be confined, it is sufficient to say that, in our

opinion, under the old tariffs the service which the North Western system was compelled to perform in hauling the grain to Milwaukee and the flour or the treated grain from Milwaukee was disproportionate to the rate received. We are also of the opinion that the service under the present tariff is liberal to Milwaukee as a milling and a grain-handling point. There is no reason why mills at Milwaukee should reach, in competition with mills between Minneapolis and Milwaukee, the great bulk of this intermediate territory, involving, as such an arrangement does, a long back haul, or its equivalent, from Milwaukee in most instances.

We are of the opinion that the carriers have fairly sustained the burden of showing that the tariff under suspension does not discriminate against Milwaukee as a milling center, in comparison with other milling and grain-handling points, and that the rates imposed under that tariff are, upon the whole, just and reasonable. The order of suspension will therefore be vacated.

25 I. C. C.

No. 4610.
EDWARDS & BRADFORD LUMBER COMPANY
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY.

FOURTH SECTION APPLICATION NO. 16.

IN THE MATTER OF APPLICATION FOR RELIEF FROM
THE PROVISIONS OF THE FOURTH SECTION BY THE
CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY.

Submitted July 18, 1912. Decided October 14, 1912.

1. For reasons given in the report herein, the contention of the complainant that defendant should make no higher charge from Chicago to South Sioux City than it makes from Chicago to Sioux City, the more distant point, is not sustained.
2. Permission is granted petitioning carrier to maintain higher rates at points on its line between Plattsmouth and Sioux City than to Sioux City with respect to traffic originating at and east of Chicago, where the rate to Sioux City is based upon or controlled by that from Chicago.
3. Such carrier is also allowed to make a higher charge to South Sioux City and points south as far as Plattsmouth than to Sioux City from various junction points upon its line between Chicago and the Missouri River, and in the state of Missouri, where the line of the carrier exceeds in length the short line by at least 15 per cent.
4. The carrier has shown no justification for charging a higher rate from points between Plattsmouth and South Sioux City than to South Sioux City upon traffic originating at St. Louis, or upon traffic where the rate is determined by combination upon St. Louis or is controlled by the St. Louis rate, and with respect to this traffic the application will be denied.

No appearances for complainant in No. 4610.

George H. Crosby for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The above case No. 4610, and Fourth Section Application No. 16, of the Chicago, Burlington & Quincy Railroad Company, were heard together, the same question being involved, and will be disposed of in one report.

25 I. C. C.

The complaint in No. 4610 attacks rates from Chicago, Ill., to South Sioux City as unreasonable. While Chicago is the only point of origin named, the complaint states that rates from all eastern territory are, in common with those from Chicago, unjust and unreasonable in so far as they exceed similar rates to Sioux City. The prayer of the petition is that for the future rates from the east to these two places may be made the same.

Sioux City lies upon the east and South Sioux City upon the west bank of the Missouri River. All lines except the Burlington serving Sioux City and South Sioux City from the east reach Sioux City before crossing the river, and therefore service to South Sioux City involves the additional expense of the river crossing. The rates established from Chicago and from other eastern territory to Sioux City are generally, and perhaps in all cases, lower than those to South Sioux City, upon the theory that Sioux City is nearer and that the cost of crossing the river may properly be reflected in the rate.

The Burlington road extends from Chicago nearly due west, crossing the Missouri River at Plattsmouth, a short distance south of Omaha. From thence it runs in a northerly direction up the west bank of the Missouri River to South Sioux City, where it crosses again to the east bank. Traffic from Chicago by this line for Sioux City therefore crosses the Missouri River at Plattsmouth, passes north to South Sioux City, then recrosses the river to Sioux City. Hence by this line South Sioux City is an intermediate point as to all business handled from the east to Sioux City.

Fourth Section Application No. 16 covers this situation and asks permission to maintain higher rates at points between Plattsmouth and Sioux City.

The real contention of the complaint is that inasmuch as South Sioux City is an intermediate point the Burlington road should make no higher charge at that point than it makes at the more distant point, Sioux City.

To this the Burlington replies that its line to Sioux City is a circuitous one, and that it should therefore be allowed to meet the rates made by the short line without reducing its intermediate charges.

Rates from eastern points of origin to all points upon the Burlington between the station next west of Plattsmouth and South Sioux City, both inclusive, are higher than those to Sioux City.

Chicago is the only point specifically named in the complaint before us and may be taken as fairly typical of eastern territory. The distance from Chicago to Sioux City by the short line is 517 miles; that by the Burlington 620 miles. It will be seen, therefore, that the Burlington is plainly a circuitous line. Upon the repeated

holdings of this Commission it should be allowed to meet the rates of its short-line competitors at Sioux City, although charging higher rates at points upon its own line up the west bank of the Missouri River, provided those rates are just and reasonable.

There is no complaint and no suggestion that rates from Chicago and other eastern points to any of these intermediate stations are unreasonable, except as to South Sioux City, and the only reason alleged why that rate should be declared excessive is because the Burlington road hauls traffic for Sioux City through South Sioux City at a lower rate.

This alone is not a sufficient reason for reducing the South Sioux City rate if otherwise unobjectionable. The contention of the complaint is not, therefore, sustained, and the prayer of the fourth section application will be granted with respect to all traffic originating at and east of Chicago where the rate to Sioux City is based upon or controlled by that from Chicago.

The fourth section application also prays for authority to make the higher charge to South Sioux City and points south as far as Plattsmouth from junction points upon its line between Chicago and the Missouri River. The ground upon which these higher intermediate rates are sought to be justified is the same here as in case of eastern territory above dealt with, namely, that the Burlington road is a circuitous line and is meeting the rate at Sioux City of its short-line rival.

It is true with respect to most of these junction points that the Burlington is a markedly circuitous route, and in such cases the relief should be granted. There are, however, some instances where the line of the Burlington, while somewhat longer than the short line, ought not to be regarded as a circuitous route. Considering the characteristics of the various railroads involved and the conditions under which traffic is handled, we are of the opinion that relief should be granted as to all these junction points where the line of the Burlington exceeds in length the short line by at least 15 per cent, and not otherwise.

The Burlington further prays, by its fourth section application, to be permitted to make higher rates to these intermediate points from various junction points upon its line in the state of Missouri. Here again the line of the petitioner would appear to be clearly circuitous from some of these points, while from others, though longer, it ought not to be fairly regarded as sufficiently circuitous to justify the charging of the higher intermediate rate. Upon all the facts and circumstances we are of the opinion that relief should be granted with respect to those points where the line of the Burlington exceeds the short line by 15 per cent or more.

Rates from St. Louis are the same to both Sioux City and South Sioux City, but are higher to stations between Plattsmouth and South Sioux City. The fourth section application asks authority to continue these higher intermediate rates. The claim here is that competition at South Sioux City has given to that point the same rate as Sioux City and that the Burlington has the right to meet this rate. Upon a full consideration of all the facts we are of the opinion that the petitioner has shown no justification for charging a higher rate at these intermediate points between Plattsmouth and South Sioux City upon traffic originating at St. Louis, or upon traffic where the rate is determined by combination upon St. Louis or is controlled by the St. Louis rate, and with respect to this traffic the application will be denied.

This further observation should be made: At the present time carriers frequently maintain the same rates to localities located upon opposite banks of the Mississippi, the Missouri, and the Ohio rivers. This is now done for the most part in case of Omaha and Council Bluffs, St. Louis and East St. Louis, and at several of the Ohio River crossings.

This Commission has held that the expense of crossing a great river like the Missouri, where the cost of constructing and maintaining a bridge may be equivalent to constructing and maintaining many miles of railway, is a valid reason for imposing a higher charge upon that traffic which must cross the river provided always that no discrimination results. We do not, however, in this case attempt to pass upon the general question whether the rates from the east, or from all directions, should be the same to these two points, since there are no facts before us upon which an intelligent conclusion can be reached. We simply hold that the mere fact that the Burlington, owing to its location, handles traffic through South Sioux City for Sioux City, does not of itself entitle South Sioux City to the same rates as Sioux City from eastern points of origin.

The complaint in No. 4610 will be dismissed, and an order will be issued in accordance with the foregoing opinion upon the fourth section application.

25 I. C. C.

No. 4887.
W. H. LEWIS
v.
CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY ET AL.

Submitted July 10, 1912. Decided October 8, 1912.

Complainant alleges that the rates on coal from Lynn and Big Four, in the Walsenburg district in southern Colorado, from South Canon, Colo., on the Colorado Midland Railway, and from Oak Creek, Colo., on the Denver & Northwestern Pacific Railway, to Alma, Nebr., are unjust, unreasonable, and unduly discriminatory, and claims reparation on basis of the decision in *Nebraska State Ry. Com. v. C., B. & Q. R. R. Co.*, 23 I. C. C. 121; *Held*, That the reasons upon which the Commission in the latter case held that the rates from Walsenburg district to Minden "K" were unduly discriminatory apply with equal force to the situation existing with respect to the rates from South Canon to Minden "K" and other stations named, and that the defendants must remove the discrimination.

C. W. Durbin for complainant.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

Hughes & Dorsey and *E. I. Thayer* for Denver, Northwestern & Pacific Railway Company.

George A. H. Fraser and *Henry T. Rogers* for Colorado Midland Railway Company.

E. E. Whitted and *Robert H. Widdicombe* for Colorado & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a citizen of Alma, Nebr., is engaged in buying and selling coal at that place. By petition, filed May 21, 1912, he alleges that the rates charged by defendants for the transportation of lump coal in carloads from Oak Creek, Lynn, Big Four, and South Canon, Colo., to Alma are unjust, unreasonable, and unduly discriminatory. Reparation and the establishment of reasonable rates for the future are asked.

Lynn and Big Four are coal-shipping points in the Walsenburg district of southern Colorado, situated on the Colorado & Southern and Denver & Rio Grande railways. The latter carrier is not made a party defendant in this case. The rates from this district to points

on defendants' lines in Nebraska have hitherto been the subject of investigation, as a result of which they were found not to be unreasonable. *Cedar Hill Coal & Coke Co. v. C. & S. Ry.*, 16 I. C. C., 387; *Colo. Coal Traffic Asso. v. C. & S. Ry.*, 19 I. C. C., 478. They were again under review in a proceeding brought by the Nebraska State Railway Commission and again the Commission refused to condemn them as unreasonable. *Nebraska State Ry. Com. v. C. B. & Q. R. R. Co.*, 23 I. C. C., 121. The latter case, however, developed an anomalous situation with respect to the rates to Minden "K," Nebr., which is described in the report as follows:

It appears that the main line of the Burlington between Denver, Lincoln, and Omaha passes through Minden; that a subsidiary line, formerly known as the Kansas City & Omaha Railway, but now a part of the Burlington system, also passes through Minden, and has a station known as Minden "K," but there is no physical connection between these two lines, either at Minden or Minden "K," although they are stated to be only a few blocks apart. Testimony on behalf of the defendants shows that the \$3.50 rate was applied at Minden June 1, 1908, because it is on the main line from the Walsenburg district to Grand Island, but that the rate was allowed to remain \$3.75 at Minden "K," because Minden "K" could not be considered an intermediate station.

In conformity with the Commission's decision and order in the case last cited, the defendants have since established and now maintain from the Walsenburg district to Minden "K" and intermediate points involved the same rate that applies to Minden, viz, \$3.50 per ton. The complainant in the present proceeding seeks reparation on shipments moving prior to the Commission's decision in the *Nebraska State Ry. Com. case, supra*. Upon the whole record it is our conclusion that no reparation should be granted in this case on the shipments from Lynn and Big Four.

Oak Creek is a coal-shipping station on the line of the Denver & Northwestern Pacific Railway, situated 194 miles northwesterly from Denver. This carrier was not a defendant in the *Nebraska case*, but it was at the time a party to joint rates from Oak Creek to the points in question on the Burlington's line in Nebraska. Coal from Oak Creek is in direct competition with coal from the Walsenburg district and the rates must necessarily be the same.

The same discrimination existed between the rates from Oak Creek to Minden and Minden "K" as existed in the rates from the Walsenburg district, but when the latter were adjusted by the Commission the defendants made a similar adjustment from Oak Creek, so that the rates from Oak Creek to Minden "K" and intermediate points, including Alma, are now by voluntary action of defendants the same as those to Minden. The Denver & Northwestern Pacific does not initiate these rates. It secures an outlet for the product of its mines only by agreement with the Burlington and other carriers operating

out of Denver, and must needs therefore join in such rates and accept the best divisions it can get. Defendants' witness testified that the rates were unreasonably low and in fact not remunerative; that they could be made no higher than the rates from the Walsenburg district, and that in the division of rates it was obliged to allow its connections a division of earnings equal to those which such connections received on traffic from the Walsenburg district. The line of the defendant traverses a very mountainous region for practically the whole distance. It crosses the main range of the Rocky Mountains, its gradients range from 1 to 4 per cent, and the cost of operation is very high. The mines were opened and the defendant began carrying coal in the early part of 1910.

The evidence shows that for the first 10 months of the fiscal year 1912, 79 per cent of all tonnage handled was bituminous coal from mines on its line. The transportation of this commodity yielded 55.14 per cent of its total revenue and averaged \$1.27 per ton, from which deductions must be made for per diem charges on equipment and also switching on coal delivered to the Union Pacific at Denver. Upon consideration of all the facts shown in connection with the transportation of coal from Oak Creek we can not find that the rates charged were unreasonable. Having been voluntarily reduced to remove the discrimination referred to, we are of the opinion that no reparation should be awarded on past shipments.

South Canon is situated on the line of the Colorado Midland Railway 213 miles west of Colorado City, its eastern terminus. This defendant was not a party to the *Nebraska State Ry. Com. case, supra*, and the rates from South Canon to Alma and other Burlington points in Nebraska have not hitherto been assailed. At the time of the hearing in the *Nebraska State Ry. Com. case* the rates were \$4.25 to Minden and \$4.50 to Minden "K" and points intermediate, and those rates we find from our examination are still in force. Rates from South Canon are said to be constructed upon a basis of 75 cents per ton higher than the rates from the Walsenburg district, but as the conditions effecting the rates from South Canon have not been very fully developed in this or any other proceeding we can make no definite finding upon the question of their reasonableness.

However, the anomalous situation which was shown by the *Nebraska State Ry. Com. case* to exist at Minden "K" and intermediate points, including Alma, and which called for an adjustment of the rates already referred to, was one that could not be justified by any showing of the reasonableness *per se* of the rates from the Walsenburg district, nor can it be justified in respect of the rates from South Canon. Although this case involves traffic originating on the line of a party not a defendant in the proceeding relating to the Minden "K" situation, the delivering defendant is the same in each case, and

we think the same reasons which necessitated a reduction of rates in the former case are likewise sufficient to require the application of a like remedy in the situation which our examination of the tariffs shows exists to-day with respect to traffic moving from South Canon to Minden "K" and intermediate points, including Alma. The complainant submits proof of one shipment moving from South Canon to Alma in January, 1911, which was charged at the \$4.50 rate, and asks reparation thereon on basis of the \$4.25 rate. No reparation, however, should be granted under the circumstances of this case.

Upon consideration of all the facts and circumstances shown in this case our conclusions are, and we therefore find, that the defendants' rates on coal from South Canon, Colo., to Minden "K," Sacramento, and the intermediate stations of Keene, Wilcox, Ragan, Huntley, Alma, Orleans, and Carter, Nebr., are unduly discriminatory and should not exceed the rate contemporaneously maintained on the same commodity from South Canon to Minden, Nebr. An order will be entered accordingly.

25 I. C. C.

No. 3247.

COFFEYVILLE VITRIFIED BRICK & TILE COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted February 15, 1911. Decided October 7, 1912.

Rate of 37 cents per 100 pounds for the transportation of brick from Cherryvale, Kans., to Dermott, Ark., found to have been unreasonable to the extent that it exceeded 25 cents. Reparation awarded.

R. E. Buckles for complainant.

F. H. Wood and *Arthur E. Haid* for St. Louis & San Francisco Railroad Company.

C. C. P. Rausch for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of brick, with its principal office at Coffeyville, Kans. By petition, filed April 22, 1910, it alleges that unreasonable charges were collected for the transportation of a carload of building brick shipped from Cherryvale, Kans., to Dermott, Ark. Reparation is asked.

The shipment, weighing 59,000 pounds, moved May 9, 1908, via the St. Louis & San Francisco Railroad to Van Buren, Ark., and thence via the St. Louis, Iron Mountain & Southern Railway, through Pine Bluff, Ark., to destination. Although the Missouri Pacific Railway Company is joined as defendant, that carrier did not participate in the transportation. Charges in the sum of \$218.80 were collected, based upon a combination rate of 37 cents per 100 pounds, composed of a rate of 5 cents per 100 pounds from Cherryvale to Van Buren, a distance of 249 miles, and a rate of 32 cents from Van Buren to Dermott, a distance of 270 miles. There was contemporaneously in effect from Van Buren to Dermott a rate of 7 cents, prescribed by the state authorities, which was subsequently enjoined by a federal court, and was not published to apply in connection with interstate traffic.

Complainant contends that the charges collected were unreasonable to the extent that they exceeded charges that would have accrued upon basis of a through rate of 12 cents, made up of the 5-cent rate to Van Buren plus the intrastate rate of 7 cents from Van Buren to Dermott. The bill of lading, however, shows that this was a through shipment from Cherryvale to Dermott, and the intrastate rate from Van Buren could not, therefore, have been lawfully applied.

At the time of shipment, for a 453-mile haul from Cherryvale to Pine Bluff, there was a commodity rate of 11 cents on brick of value not exceeding \$5 per 1,000 brick, and there was a mileage class rate of 13 cents on brick from Pine Bluff to Dermott, a distance of 66 miles. The record does not show the value of the brick shipped, and at the time of shipment there was no commodity rate on brick of value exceeding \$5 per 1,000. Effective September 1, 1909, however, a commodity rate of 12 cents was established and has since been maintained from Cherryvale to Pine Bluff without restriction as to the value of the brick.

Upon consideration of all the facts and circumstances we are of the opinion and find that the rate of 37 cents charged complainant for the transportation of this shipment was unreasonable to the extent that it exceeded 25 cents.

We further find that complainant made the shipment in accordance with the foregoing statement of facts and paid charges thereon at the rate herein found unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$71.30, with interest from May 18, 1908. An order will be entered accordingly.

25 I. C. C.

No. 4587.

DAVIDSON BROTHERS

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted July 6, 1912. Decided October 8, 1912.

Rate of 79 cents per 100 pounds for the transportation of bananas in carloads from New Orleans, La., to Glasgow, Ky., found to be unreasonable to the extent that it exceeds 50 cents per 100 pounds, which rate is prescribed for the future.

J. V. Norman and Baird & Richardson for complainant.

William A. Northcutt and William G. Dearing for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation doing a jobbing and wholesale grocery business with office and main stores at Glasgow, Ky. Defendants' third-class rate of 79 cents per 100 pounds for the transportation of bananas in carloads from New Orleans, La., to Glasgow is, by petition filed December 9, 1911, challenged as unreasonable and unduly discriminatory, and reparation is asked on nine shipments made during the period December 10, 1910, to September 28, 1911, inclusive.

The complaint originally alleged violation of section 4 of the act, because of a lower rate to Louisville, Ky., but as the issue here is upon the through rate to Glasgow, and Louisville traffic does not pass through Glasgow, this allegation was later abandoned. The only issue involved is the reasonableness *per se* of defendants' rate of 79 cents on bananas in carloads from New Orleans to Glasgow.

The distance via the Louisville & Nashville from New Orleans to Glasgow is 728 miles. The shorter route, and the one traversed by the shipments here involved, is via the Illinois Central to Milan, Tenn., thence via the Louisville & Nashville to Glasgow, a total distance of 667 miles.

Included in the latter route is the Glasgow Railway, operated by the Louisville & Nashville, and connecting with the latter's main line at Glasgow Junction, whence it extends easterly 10 miles to Glasgow, its terminus, and the natural gateway to several counties

lying east and south. Glasgow is a distributing point by wagon for these counties, embracing a territory of over 3,000 square miles, with 500 stores and a population of about 150,000. In this territory complainant does a general jobbing business of approximately \$600,000 per annum.

The nearest railroad to the eastward is the Cincinnati, New Orleans & Texas Pacific, 100 miles distant. Glasgow is apparently a prosperous town, and it handles annually a large traffic in tobacco, lumber, cattle, hogs, wool, hides, poultry, and eggs, estimated to be worth close to \$2,000,000.

Because of necessary wagon hauls of from 20 to 60 miles, in addition to rail transportation, it is represented that the territory served by Glasgow can not be satisfactorily supplied through that point by jobbers shipping from Louisville, Nashville, or other similar jobbing points; consequently this territory had no traffic in bananas until complainant undertook to handle carloads into Glasgow and established a ripening plant there. During the 18 months prior to the initiation of this proceeding complainant handled to Glasgow 18 cars of bananas, principally from New Orleans, and represents that with a satisfactory rate there is ample field for building up a traffic of 25 to 50 cars per year. Carload shipments have now been discontinued and the trade is being supplied as formerly in limited quantities by wagons from Bowling Green, Ky., and Glasgow.

The 79-cent rate complained of is the third-class rate carried in Illinois Central tariff, I. C. C. No. 3239, and applicable via the joint route of the Illinois Central and the Louisville & Nashville from Milan. It is based on the standard distance scale of the latter carrier applied to the continuous mileage of the Louisville & Nashville, including that of the Glasgow Railway of 728 miles, although the Milan route is 62 miles shorter. The principal witness for defendants asserted that Glasgow is given the usual standard mileage scale applied to all local stations, but later in his testimony represented that its proximity to the Cumberland River has secured for Glasgow a much lower plane of rates than it would otherwise enjoy. Grapefruit, lemons, oranges, and similar fruit take the second-class rate of \$1.02 to Glasgow. Apples and pears are sixth class, or 65 cents. The latter are common articles of food, and lower rates are necessary, it is contended, to induce a movement from distant points. The rate of 79 cents in question via the long line yields over 2 cents per ton per mile. The sugar rates, New Orleans to Louisville and Glasgow, indicate something of the relationship which it is claimed should exist. They are 17 cents and 25 cents, respectively, as against banana rates of 39 cents and 79 cents, respectively.

Some of the commodity rates on bananas from New Orleans with which complainant makes comparison are: Afton, Minn., 68; Akron, Ohio, 50; Anderson, Ind., 48; Battle Creek, Mich., 50; Montreal, Quebec, 76½. It is not claimed that the conditions of transportation are similar, but that the rate to Montreal, for instance, is noteworthy.

To Louisville, 90 miles beyond Glasgow Junction and 80 miles farther distant from New Orleans than Glasgow, the rate is 39 cents. The rate of 43 cents sought is based upon the application of the Louisville rate to Glasgow Junction plus 4 cents for the branch line, stated by complainant to represent the average earnings of the Louisville & Nashville on all carload traffic Glasgow Junction to Glasgow. This, however, is lower than the average of the local scale.

The Louisville rate of 39 cents is maintained by the Illinois Central as a blanket rate to practically all stations in Kentucky, including branch-line points such as Fordsville and Hodgenville, distances of 697 and 748 miles, respectively, and the same rate is applied by the Mobile & Ohio Railroad to its stations in Tennessee and Kentucky. These are one-line hauls, but the Cincinnati, New Orleans & Texas Pacific in connection with the Alabama Great Southern and New Orleans & Northeastern, three-line hauls, carries rates of 50 cents to Burnside and Somerset, Ky., 668 and 675 miles, and 42 cents to Junction City, Ky., 715 miles, where it intersects the Louisville & Nashville.

Defendants submitted a comparative table of class rates applicable to bananas, carloads, from New Orleans to local points on various lines in southeastern and Carolina territories, ranging from 79 cents to \$1.05 for varying distances of from 367 miles to 727 miles. The purpose of this was said to be merely to show that the Louisville & Nashville rate to Glasgow Junction compared favorably with the rates of other lines, and not to suggest similarity in the conditions existing at these points and at Glasgow. As a matter of fact it is admitted that few, if any, of the points named have ever handled bananas in carloads.

Likewise, comparison was made with different local-distance scale rates of other roads, including the rate of the Mobile & Ohio of 63 cents for 300 miles. The gist of this complaint, however, is that the mileage class rate is too high and that a lower commodity rate should be established, and it is significant that against a mileage scale rate of 63 cents for 300 miles the Mobile & Ohio offers a commodity rate of 39 cents for distances of 353 miles to 470 miles. Defendants' contention that a reduction of the Glasgow rate would affect approximately 700 stations similarly situated is, of course, entitled to consideration, but as was said in *Milburn Wagon Co. v. L. S. & M. S. Ry. Co.*, 22 I. C. C., 93, 100, "justice should not be denied complainant because to grant it will necessitate a change elsewhere." More-

over, we are not convinced that such result would follow, as the only other station cited as serving a wide territory as a jobbing center is Cullman, Ala.

As has been shown, to Somerset and Burnside, Ky., on the Cincinnati, New Orleans & Texas Pacific, directly opposite to Glasgow, three-line hauls but involving no branch-line movement, the rate is 50 cents. To Glasgow the haul is over two lines and the branch-line movement must be recognized. Upon all the facts of record we are of the opinion, and so find, that any higher rate than 50 cents to Glasgow is unjust and unreasonable, and that for the future the rate should not exceed 50 cents.

The petition asks reparation on nine shipments delivered at Glasgow on various dates from December 19, 1910, to October 6, 1911. These shipments aggregated 184,160 pounds, upon which complainant paid charges in the total sum of \$1,458.43. One shipment moving December 24, 1910, weighed 20,000 pounds and charges were assessed in the sum of \$155. On basis of minimum weight and rate legally applicable the correct charge should have been \$158, and there is, therefore, an undercharge of \$3. One shipment moving August 3, 1912, weighed 20,550 pounds and charges in the sum of \$168.92 were assessed. We find that there is an overcharge of \$6.57 on this car or, therefore, a net overcharge of \$3.57 on the nine shipments.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable, and that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable, and is therefore entitled to an award of reparation in the sum of \$537.63, with interest from October 6, 1911, which includes the overcharge above referred to. An order in accordance with the above findings will be entered.

25 I. C. C.

4622.

CHARLES REAM

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 1, 1912. Decided October 8, 1912.

A tariff providing for the inclusion of a limited number of head of live stock with a carload shipment of household goods, and providing for free transportation of a caretaker when such live stock consists of either horses, mules, or cattle, can not be construed to provide for free transportation of a caretaker for chickens, because shipped with household goods, nor is the tariff in question unreasonable or unduly discriminatory by reason of failure to so provide.

Rufus B. Daniel and Brown & Terry for complainant.

E. W. Clapp for Southern Pacific Company.

H. A. Scandrett and J. R. Christian for Chesapeake & Ohio Railway Company; Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railway; Morgan's Louisiana & Texas Railroad & Steamship Company; and Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a resident of Los Angeles, Cal. By petition, filed January 12, 1912, he alleges that on or about October 14, 1909, he shipped from Richmond, Va., to Los Angeles, Cal., one carload of emigrant movables, consisting of household goods, and 12 chickens, the latter being released to the value of \$5 per head; that said shipment was forwarded under the terms and conditions of a live-stock contract executed with the agent of the originating carrier which agreed to carry free the defendant as a caretaker on the train with said shipment; that when the car in which the shipment was contained and in which the complainant was traveling as caretaker arrived at El Paso, Tex., en route to Los Angeles, the agent of the intermediate carrier at that point compelled the complainant to leave the car and refused to permit him to travel farther in the capacity of a caretaker; that by reason thereof he was compelled to purchase for himself transportation from El Paso to Los Angeles at a cost of \$30; that in addition to the freight charges assessed upon the shipment, he

was compelled, before the delivering carrier would, and did, deliver the shipment to pay the sum of \$53 for his fare from Richmond to El Paso. Complainant further alleges that by reason of the facts stated he has been subjected to unjust discrimination and overcharged in the sum of \$83, for which reparation is sought. The claim was first filed with the Commission September 25, 1911.

The facts of the case as disclosed by the record are as follows: On October 14, 1909, there was loaded and delivered to the Chesapeake & Ohio Railway Company at Richmond Va., car C. I. & L. 17495, with directions to ship to the complainant at Los Angeles, Cal. The receipt of the car by the carrier and the undertaking to transport it as directed are evidenced by a live-stock contract signed on behalf of the carrier by its agent and for the shipper by "Mrs. A. Ream, by Chas. Ream." The property was described in the contract simply as "one car H H goods & Live Stock," and a rate of \$1.25 per 100 pounds, minimum weight 20,000 pounds, was inserted and reference made to Trans-Continental Freight Bureau Westbound Freight Tariff No. I-1. On the document mentioned, written in pencil, evidently after its execution, is a notation as to routing which reads: "Via Louisville, Ky., Ill. Cent. Ry. Co. c/o Co. Pac. Ry. at New Orleans." The name of Charles Ream was inserted as "person in charge of live stock." No mention of the kind or number of live stock is made in this document.

The shipment moved via the route directed to New Orleans. At the latter point a new live-stock contract was made between the complainant and Morgan's Louisiana & Texas Railroad & Steamship Company. In this latter contract the property is described as "Emigrant outfit and chickens, O. R. Rel. Val. \$5 cwt. man in charge." The complainant accompanied the shipment from Richmond to El Paso and he testified that no question of his right to travel in the capacity of caretaker was raised until he arrived at the latter place, where the defendant's agent, after interrogating him and examining his copy of the contract, told him that he had no right to travel as caretaker, refused to permit him to go farther in that capacity or even to accompany the car which was sent forward under seals. At destination charges were exacted in the sum of \$303, based on a freight charge of \$250, computed on a minimum weight of 20,000 pounds at a through rate of \$1.25, to which was added \$53 for fare from Richmond to El Paso. In addition, complainant testified that he paid \$30 for transportation from El Paso to Los Angeles.

The tariff under which the shipment moved from Richmond, Va., to Los Angeles, Cal., named a rate of \$1.25 per 100 pounds on household goods, subject to a minimum weight of 20,000 pounds, and carrier's liability limited to \$5 per 100 pounds in case of loss or

25 I. C. C.

damage. Note 1 to the item provided that live stock, not exceeding 10 head, might be shipped with a carload of household goods at the rate applying thereon. Other qualifying notes read as follows:

NOTE 3.—With carload household goods, etc., containing horses, mules, or cattle, one man in charge of same may be passed one way. No return passes will be given. Such shipments will be subject to the usual live-stock contract.

NOTE 4.—The above rates are conditioned upon live stock being shipped under special contract and valuation not to exceed:

	Each.
For horses, jacks, or breeding bulls.....	\$100
Mules.....	65
Calves.....	10
Cattle.....	30
Hogs.....	10
Bucks and goats.....	10
Sheep.....	5

The ground upon which complainant seeks reparation is not clearly defined. The petition alleges that chickens are animals and that no provision is made in the tariffs for chickens, which, it is alleged, are more susceptible to damage by lack of attention than are any of the animals specifically named in the tariff. This allegation is immediately followed by another claiming that the complainant has been overcharged in the sum of \$83. At the hearing the complainant's representative argued that the term "cattle" includes "cows, calves, sheep, goats, and hogs."

The complainant entirely misapprehends the terms of the tariff under which the shipment moved. It provides for the free transportation of a caretaker only when horses, mules, or cattle are included with a shipment of household goods. No provision whatever is made for the free transportation of a caretaker on account of the inclusion of any of the other named species of live stock, much less of chickens, which are not mentioned in the tariff. Complainant also seems to be under the impression that the mere inclusion of a calf would be sufficient to entitle a caretaker to free transportation and suggests that if the value of live stock has any bearing on the matter that the 12 chickens in question were more valuable than a calf, and that it would be unreasonable and unjust not to carry a man free with the chickens. The tariff states the maximum number of head of live stock that may be included with a car of household goods, namely, 10, but it does not specify any minimum number. We note, however, that the terms employed in the tariff are all in the plural; and while we do not here decide whether the inclusion of only one horse, mule, or calf would be sufficient to entitle a caretaker to free transportation, we yet think the value of the live stock so included should be considered. The defendants state on brief

that the rule of the carriers providing that a man shall be passed only in case shipment contains horses, mules, or cattle is reasonable and necessary as a precaution against fraud on the part of the shipper and that the caretaker privilege is extended only when those animals are included whose value is sufficient to guard against such a fraud.

The complainant insists that free transportation to caretakers is a privilege extended by the carrier to shipper and that if granted to one who ships cattle the carrier may not properly refuse to grant it to another who ships chickens, because, as he alleges, they are more susceptible to damage than cattle.

The provision of the law under which such transportation is furnished is not mandatory, but it is permissive in that it states that the inhibition against the giving of free transportation to passengers shall not apply to certain excepted classes, including "necessary caretakers of live stock, poultry, milk, and fruit," etc. Under this provision of the law free transportation can be granted only to *necessary* caretakers, and the necessity therefor is, in the first instance, a matter to be determined in the sound discretion of the carrier. The law does not in our view contemplate the granting of a privilege to a shipper or caretaker which shall be of value to him in the sense that by including in his shipment live stock or poultry which in point of value is relatively negligible he may thus be able to secure for himself free transportation of greater money value than the live stock or poultry shipped.

We do not find that the tariff specifically or by construction gave to the complainant any right to free transportation as a caretaker in charge. Moreover, we think the carrier could not properly make such a provision. Were chickens to be thus placed on an equality with horses, mules, or cattle it might then logically follow that a man might claim free transportation as caretaker for as few as a couple or possibly not more than one fowl of ignoble breed, whose "released value," however, might be set at any figure. And, again, if chickens were to be included in the tariff on an equality with horses, mules, or cattle for the purpose of entitling a caretaker to free transportation, upon what theory could free transportation be refused to a caretaker of any other species of domestic fowl? We find no merit in complainant's contention that the failure by defendants to provide for the free transportation of a caretaker with a shipment of household goods and chickens was discriminatory within the meaning of the law.

There is some conflict in the evidence as to the circumstances under which the shipment was received by the carrier at Richmond. The father of complainant, who seems to have made the arrangements at Richmond for the shipment, deposed that the rate of \$1.25 per 100

pounds was quoted upon household goods and chickens. No witness in behalf of the originating carrier appeared at the hearing, but in an affidavit made by a rate clerk of that road it is stated that complainant and his father presented themselves to him in his office at Richmond and sought information as to the rate on live stock and household goods from Richmond to Los Angeles; that he informed them of such rate and stated that it would apply on five head of live stock and that a caretaker would be entitled to travel free with the live stock, nothing being said at the time, however, as to the character of the live stock; that two days later the car was loaded and the parties again visited him and stated that live stock consisting of two horses and a cow, or instead only two horses, would be loaded into the car and requested him to issue the usual live-stock contract providing for free transportation for a caretaker, which he thereupon did. The affiant further states that at no time was he informed that chickens had been or would be loaded into the car with the household goods, and that he did not state to complainant or anyone else that a caretaker would be entitled to free transportation with the chickens. There was also put in the car, it appears from the deposition of complainant's father, a valuable shepherd dog, which did not complete the journey.

The agent at Richmond evidently issued the live-stock contract embodying an agreement for free carriage of a caretaker without inspecting the car. The agent at New Orleans issued a new live-stock contract expressly mentioning the chickens and providing for free transportation of a caretaker. Whether misled by the complainant or not, both defendant companies were grossly negligent of the requirements of the law.

Under the published tariffs the originating carrier should have required complainant to pay the regular first-class limited fare from Richmond to Los Angeles of \$72.95. He was required to pay en route the sum of \$83 in railroad fare. We find that the fare charged was unreasonable in so far as it exceeded the first-class limited fare above stated, and that he was damaged thereby in the sum of \$10.05. An order of reparation in that amount will be entered, with interest from November 1, 1909.

25 I. C. C.

No. 4389.
UNION TANNING COMPANY ET AL
v.
SOUTHERN RAILWAY COMPANY ET AL

Submitted February 17, 1912. Decided October 15, 1912.

Rates on coal from the Appalachia and Dante fields of southwestern Virginia to Old Fort and Morganton, in North Carolina, found to be unduly discriminatory as compared with the rate from the same fields to Canton, N. C., and defendants required to remove such discrimination. Reparation denied.

Arthur B. Hayes for complainants.

R. Walton Moore and *Claudian B. Northrop* for Southern Railway Company and Virginia & Southwestern Railway Company.

R. Walton Moore for Carolina, Clinchfield & Ohio Railway.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are engaged in the tanning business, the Union Tanning Company at Old Fort, and Kistler Lesh & Company at Morganton, in the state of North Carolina. By petition, filed September 7, 1911, they assail as unreasonable and discriminatory the rates on coal from the mines of southwestern Virginia to their plants. They ask that just and reasonable rates be established for the future, and seek reparation on past shipments.

Old Fort and Morganton are located on the line of the Southern Railway, the former 30 miles and the latter 62 miles east of Asheville, N. C. The Virginia coal fields embrace what are known as the Black Mountain, Appalachia, Toms Creek, and Dante fields. Only the rates from the Appalachia and Dante fields are involved in this proceeding. The distances stated below include 12 miles at Appalachia and 5 miles at Dante for assembling purposes.

From the Appalachia field coal usually moves via Morristown and Asheville. To Old Fort the distance is 230 miles, and to Morganton 262 miles. To Asheville over the same route the distance is 200 miles. From the Dante field the short-line route is via Johnson City and Marion, 199 miles to Old Fort and 209 miles to Morganton. To Asheville over the same route the distance from Dante is 229 miles. The rates are the same from either Appalachia or Dante.

At the time the complaint was filed the rate to Old Fort was \$2.05, to Morganton \$2.25, and to Asheville \$1.65 per ton. October 15, 1911, those rates were reduced to \$1.85 to Old Fort, \$2.15 to Morganton, and \$1.60 to Asheville, but the reductions are not satisfactory to

complainants. The Asheville rate applies also to Canton, N. C., a point on the Southern Railway 18 miles west of Asheville, where there is located a plant engaged in the manufacture of wood pulp, and in making extract which it sells for tanning purposes. The Union Tanning Company also manufactures extract at Old Fort, which in the past it has consumed in its tanning business. The plants at all three of the points are consumers of steam coal, obtained chiefly from the coal fields referred to.

The rate to Old Fort is 25 cents per ton higher than the rate to Canton, whereas the distance via Morristown and Asheville is only 12 miles greater. To Morganton the rate is 55 cents per ton higher than the rate to Canton, though the short-line distance from the Dante field to Morganton is 9 miles less than the short-line distance from the Appalachia field to Canton. It is upon this situation that the charge of discrimination is based. Complainants contend that as steam coal is essential to the successful operation of the plants at all three of the points, it is unjust to charge them rates so much higher than the rates to Canton.

Objection is made by defendants that no issue of undue discrimination is raised by the pleadings. It is true the complaint lacks definiteness, but it does charge that the rates discriminate against the business of complainants and against the points where their plants are located. The indefiniteness of the charge arises from the fact that the points intended to be compared with Old Fort and Morganton are not specifically stated. The evidence submitted at the hearing was confined chiefly to Canton and to comparisons of the rates to that point with the rates complained of, and the situation in this respect was gone into fully by both sides. Defendants did not claim to have been taken by surprise to their injury, and so far as indicated by the record no undue advantage has been taken of them. What might have been their rights, or what would have been the proper course to pursue, if evidence had been offered as to other points, we need not consider. Under the circumstances we think there is a question of discrimination because of the lower rates to Canton presented by the record.

Defendants further contend that on the facts no undue discrimination is shown. They insist, in substance, that as the products of the Old Fort and Morganton plants are not sold in competition with the products at Canton, the complainants are not in a position to complain of discrimination. We do not agree with this contention. It is predicated upon the theory that favoring one manufacturer over another can not be accounted undue discrimination unless both are engaged in the manufacture of the same or similar articles of commerce, and compete with one another in the markets. The theory

is not sound. The giving of a lower rate to one manufacturer than to another, when both are so situated as to entitle them to equal rates, must necessarily operate to the disadvantage of the one who pays the higher rate. Undoubtedly this would be discrimination and, we think, clearly within the condemnation of the statute as undue and unreasonable, whether the output of the two enterprises were the same or not. Two manufacturers located at the same point and both dependent upon the same mines and the same carriers for their coal supply are ordinarily entitled to equal rates, and this is so irrespective of the character, use, or disposition of their products. Certainly a lower rate to one than to the other could not be justified merely upon the absence of competition in the sale of their products. The same principle applies in a controlling sense to the case before us.

Extract is produced at Old Fort as well as at Canton. The rate on coal enters into the cost of its manufacture the same at one point as at the other. It is the same article of commerce, intended for the same use. It would be strange indeed to require the output of the two plants to be sold in competition with one another as a condition precedent to the consideration of a charge of discrimination in freight rates, however justifiable in other respects.

The evidence offered on the question of the reasonableness of the rates is not of a definite or convincing character. It consists chiefly of comparisons of the ton-mile earnings under the rate to Canton with the like earnings under the rates to Old Fort and Morganton, and tends rather to support the charge of discrimination than to show that the rates are unreasonable *per se*. On the record the real claim is that the rates are relatively unreasonable rather than intrinsically so.

This clearly appears from the testimony of the principal witness for the complainants, and from the record as a whole it is clear that the principal ground of complaint is the alleged discrimination and not that the rates are unreasonable *per se*.

It should be stated in this connection that the Carolina, Clinchfield & Ohio Railway has been in operation only since March, 1909. It was constructed in a very substantial manner and at great expense. About 85 or 90 per cent of its traffic is coal. Its earnings up to this time have not been sufficient to pay fixed charges, and nothing has been paid in dividends. Any reduction in its rates that would entail serious loss of revenue would be difficult to justify at this time.

The Asheville rate of \$1.60 is carried as far west as Canton, a distance of 18 miles. To Clyde, 5 miles beyond Canton, the rate is \$1.75, and to Waynesville, 10 miles beyond, or 28 miles from Asheville, the rate is \$1.85.

To points east of Asheville there is a gradual increase in the rate ranging from \$1.65 to Biltmore, to \$1.85 to Terrell, Old Fort, and

points beyond, to and including Marion, which is 41 miles from Asheville. Terrell is 18 miles from Asheville. To these points coal moves via Johnson City and Morristown.

To points east of Marion on the same line there is a like gradual increase, which gives a rate of \$2.10 to Nebo, the first station beyond, a rate of \$2.15 to Morganton, and a rate of \$2.25 to all points beyond Morganton to and including Salisbury, which is 141 miles from Asheville and 100 miles from Marion. To these points coal moves via Johnson City and Marion. Under a like gradual increase to points west of Asheville as obtains to the eastern points, the rate to Canton would be \$1.85, and no occasion for a charge of discrimination as between Canton and Old Fort would exist.

There does not appear to be any justifiable transportation reason for the wide discrepancy in rates for substantially similar distances east and west of Asheville. The grade is somewhat heavier to the east than to the west, but not sufficiently so to justify the existing difference in the rates.

To Morganton the short-line haul is 209 miles, as compared with a haul of 218 miles to Canton. There are other matters to be considered, however, in connection with the Morganton rate. To that point the Carolina, Clinchfield & Ohio has the long haul. Again, if the movement was via Morristown and Asheville, the distance to Morganton would be about 44 miles greater than the distance to Canton. This increase of distance, however, would not of itself justify a difference of 55 cents per ton in the rates.

Upon consideration of all the facts we are of the opinion and find that the maintenance by defendants of the present relation of rates on coal to Canton, Old Fort, and Morganton, amounts to an undue discrimination against complainants which should be removed. We further find that the rate to Old Fort should not be more than 5 cents per ton higher than the rate to Canton, and that the rate to Morganton should not be more than 35 cents per ton higher than the rate to Canton. We think the defendants should be permitted themselves to work out such a readjustment as may be necessary to meet the views herein expressed; and they will be allowed until the 15th day of January, 1913, in which to do so. The case will be held open for such order as may be found necessary.

We have carefully considered the claim for reparation, and under all the circumstances we are unable to find that complainants have been damaged, and reparation is denied.

25 I. C. C.

No. 4338.

**MANUFACTURERS & MERCHANTS' ASSOCIATION OF
NEW ALBANY, IND., ET AL.**

v.

ABERDEEN & ASHEBORO RAILROAD COMPANY ET AL.

Decided October 7, 1912.

Petitions for modification and extension of original order in this case, filed by complainants, and for setting aside of said order, filed by defendants, denied as to all contentions of both parties, except as to complainants' request for reconsideration of question of reparation.

Hines & Norman for complainants.

R. Walton Moore for Southern Railway Company and Illinois Central Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

In the original report in this case, 24 I. C. C. 331, 339, the Commission found that—

in maintaining from the territory south of the Ohio and Potomac and east of the Mississippi rivers, and on lumber from Arkansas, rates to Cairo, Ill., Evansville, Ind., and Cincinnati, Ohio, on the north bank of the Ohio River, which include no toll or charge for the bridge service from either East Cairo, Ky., Henderson, Ky., Covington or Newport, Ky., on the south bank of that river, while contemporaneously maintaining from the same points of origin to New Albany, Ind., on the north bank of said river, rates higher than to Louisville, Ky., on said south bank, by the amount of the bridge toll or charge, defendants are subjecting complainants and shippers of New Albany, Ind., to undue and unreasonable prejudices and disadvantages, from which an order will be entered to cease and desist.

And with respect to reparation it was stated:

It is our further finding and conclusion, following the principles announced in *Anadarko Cotton Oil Co. v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 43, that reparation should not be awarded.

The complainants now file a petition for modification and extension of the order entered in removal of this discrimination, and the defendants Southern Railway Company and Illinois Central Railroad Company file separate petitions asking that the order be set aside. The Louisville & Nashville Railroad Company has not filed a petition for rehearing or setting aside of the order.

Complainants' petition is directed to several points, namely:

1. An apprehension that by establishing rates which include a nominal charge for the bridge service at the other north-bank Ohio River crossings—Cairo, Evansville, and Cincinnati—the order of the Commission, while technically complied with, will be defeated in its spirit, intent, and effect.

2. A request that the order be so extended as to make clear that an absorption of the bridge charge at any one of the other north-bank crossings above named effects the discrimination against New Albany which the Commission finds in its report to exist.

3. A request for an additional provision in the order that in no event shall the rate to New Albany exceed the rate to Louisville by an amount in excess of the through bridge toll from the south bank, this provision to cover certain exceptions to the general practice of the defendants with respect to the absorption of the bridge charge at the other north-bank Ohio River crossings named.

4. Certain minor situations, in which, for instance, rates on the raw material are higher than on the products; or through rates exceed intermediate combinations; or in which attention is invited to allegations in the original petition of unjust discrimination in favor of Louisville and of unreasonableness and extortion *per se* in the rates to New Albany, as to which the Commission made no specific finding.

5. A request for reconsideration of the question of reparation on the grounds, generally speaking, that the present case differs from the *Anadarko Cotton Oil Co. case*, *supra*, in that it is one of discrimination against which continuous protests had been made within the two-year period immediately preceding the filing of the complaint, whereas the *Anadarko* complaint was directed against rates unreasonable in themselves and as to which no complaint had been made prior to the formal proceeding before the Commission; that the granting of reparation is a judicial act, based upon a rule of law, and not subject to the exercise of discretion on the part of the Commission; that the complainants should at least be afforded an opportunity to show whether or not the undue discrimination existed for two years immediately preceding the filing of the complaint; that in any event reparation must be awarded from the time of filing of the formal petition, conditions at which time and for the two years immediately preceding are, strictly speaking, the only conditions in issue; that the refusal to grant reparation, at least from the date complaint was filed, imposes a hardship upon complainants before the Commission and works to the advantage of the carrier in every case in which there is a delay in final disposition, whether occasioned by the carriers or the Commission, and thereby encourages the carriers to seek postponements and delays.

As to the first contention: We have assumed that the carriers will in good faith comply with the Commission's order both in its letter and intent.

As to the second contention: The order of the Commission necessarily was general in its nature, as the complaint was directed against a discrimination in favor of other north-bank Ohio River crossings as a whole; but it may be stated that each defendant carrier is responsible for the discrimination found where it participates in joint rates both to New Albany and to one or more of the other north-bank crossings with which comparison is made.

As to the third proposition: The testimony was directed mainly to the discriminatory feature of the complaint and our findings were made accordingly. We have assumed, however, that the carriers will in no event exceed the bridge toll in their addition to the Louisville rate in constructing through rates to New Albany.

The matters covered under the fourth heading will be disposed of by compliance with the present order.

The question of reparation, under the fifth heading, will be discussed later in this report.

The contentions in the petitions now filed by the carriers are not substantially different from those presented to and considered by the Commission in the original disposition of this case. The Southern Railway urges that while it reaches Evansville through New Albany, by the north bank of the Ohio River, with its own rails, it is not responsible for the Evansville adjustment, but merely meets the competition of the direct route; and that while participating in joint rates to the other north-bank Ohio River crossings it does not, in the division of such rates, consider or recognize any separate charge for crossing the river. This carrier lays considerable stress upon the Commission's reference to the Cincinnati, New Orleans & Texas Pacific Railway, as to which carrier there is the relationship incident to an indirect stock ownership by the Southern Railway Company. The Commission's statement in this respect was merely one of fact in connection with the contentions of the parties based thereon, and its findings condemning the discrimination against New Albany as undue were justified and impelled by the other facts of record. The Southern Railway's route to Evansville and the attitude of this carrier, present and past, with respect to New Albany, is fully set out in the original report. The fact that the Southern Railway does not enter Cairo and Cincinnati direct with its own rails and does not consider or recognize in its division of joint rates with other carriers to these two crossings any separate charge for crossing the Ohio River, does not relieve that carrier from responsibility for the discrimination against New Albany which the Commission found to exist. Neither the Commission nor the shipping

public is necessarily concerned in the divisional or contractual arrangements between the carriers themselves in determining whether their aggregate rates work an unjust discrimination against one of the respective points to which they apply.

The petition of the Illinois Central Railroad Company is drawn along the same general lines as that of the Southern Railway Company, but suited to the physical extension of its lines into Cairo by its own rails and into Evansville by contractual arrangement with the Louisville & Nashville Railroad Company for entrance over the bridge of that carrier. The Illinois Central seeks to differentiate the situation at the Cairo and Evansville crossings upon the theory that these bridges are to be considered a constituent part of its own system. It is difficult for the Commission to accept the alleged distinction when in effect this carrier is compelled to adopt practically the same means of entrance into Evansville as into New Albany, the difference being that in the case of Evansville it is by contract with another carrier direct, and in the case of New Albany by contract with bridge or terminal companies; in each case, however, necessarily entailing to it some additional expense. Another alleged dissimilarity urged—of competition at Evansville and Cairo not found at New Albany—is fully treated of in the original report.

That part of the complainants' petition asking for a reconsideration of our finding with respect to reparation presents certain questions similar to questions involved in other cases before the Commission, some of which have arisen since the report in this case was issued, and in our judgment they should have consideration. This branch of the case will accordingly be reconsidered and the parties given an opportunity for oral argument thereon. To this extent, therefore, the original report is hereby modified. The application of complainants to extend and modify, in the several particulars noted, the order as entered respecting undue discrimination is hereby denied, together with the defendants' applications that said order be set aside. It therefore follows that the order heretofore entered remains unaffected and stands in full force and effect, except that its effective date will be postponed to December 15, 1912. An order will be entered accordingly.

No. 4547.

CORPORATION COMMISSION OF OKLAHOMA

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted August 15, 1912. Decided October 8, 1912.

Upon the facts of record in this case, the complainant's prayer for the restoration of the sleeping-car service formerly maintained by defendants between Guthrie, Okla., and Canadian, Tex., should be denied. Complaint dismissed.

G. A. Henshaw for complainant.

S. T. Bledsoe for Pullman Company and Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Corporation Commission of Oklahoma brings this proceeding against the Atchison, Topeka & Santa Fe Railway Company and the Pullman Company jointly. The petition, filed November 2, 1911, alleges that the defendants, by reason of having discontinued a through sleeping-car service between Guthrie, Okla., and Canadian, Tex., which they at one time maintained, are now subjecting the citizens of Oklahoma who travel between Guthrie and Canadian and the intermediate towns to great inconvenience and unnecessary lack of accommodations to which, it is alleged, they are entitled.

Defendant Atchison, Topeka & Santa Fe Railway Company in its answer admits substantially the facts alleged in the petition and the authority of the corporation commission to bring the complaint. It answers further, however, that the sleeping-car service in question was installed while Guthrie was the capital of Oklahoma and while the legislature was in session at said capital upon the representation of members of the legislature that said sleeping-car service would be responded to by heavy travel and would become remunerative; that it did not at that time believe such service would pay expenses, but, in order to leave no doubt and also to make the experiment of developing a possible travel, it installed sleeping-car service from Guthrie via Kiowa, Kans., to Canadian, Tex.; that the said service entailed a loss from beginning to end and proved a financial failure. It

further says that its understanding with the Oklahoma commission was that the installation of said service should be experimental and that it would be discontinued should it prove unremunerative. It denies that there ever has been a public need of a sleeping-car service such as is sought and raises the question of the authority of this Commission to require the railway company to furnish sleeping-car service at a loss to accommodate the few persons who, it alleges, travel between Guthrie and Canadian and the intervening points.

Upon the question of its procedure in cases where a question of its jurisdiction is raised, this Commission has hitherto held that as an administrative body it is not necessarily controlled by the general rule that a tribunal, whose authority is invoked by complaint filed before it, must determine whether the subject matter is within its jurisdiction before it may consider the merits of the controversy; but that affirmative relief may not be granted in any case unless jurisdiction over the subject matter is definitely ascertained: *Jones v. St. L. & S. F. R. R. Co.*, 12 I. C. C., 144.

The Atchison, Topeka & Santa Fe Railway Company operates a branch line from Guthrie, Okla., to Kiowa, Kans., where connection is made with its Southern Kansas and Panhandle divisions extending into Texas, reaching Amarillo and other important towns. It is the only direct line, if such it may be called, connecting Guthrie and Canadian and serving the various intermediate towns. The testimony shows that on the 1st day of November, 1910, the defendants installed a through Pullman tourist sleeping-car service between Guthrie and Canadian, the westbound train leaving Guthrie about 5 o'clock p. m. and arriving at Kiowa at 10.40 p. m., where the sleeper was attached to a train leaving Kiowa at 10.50 and arriving at Canadian at 5.15 a. m. A sleeping car was also run on the eastbound train leaving Canadian about 9.30 p. m., arriving at Kiowa about 4 a. m., and reaching Guthrie on the branch line at 10.15 a. m. Because the defendants considered the business insufficient to warrant its maintenance the service was discontinued March 6, 1911, after having been maintained for 125 days. Under the contract between the Atchison, Topeka & Santa Fe Railway Company and the Pullman Company the first \$4,700 earned per car on an average is paid to the Pullman Company on tourist sleepers. The railway company then receives the next \$1,000 per car on an average, and any excess above \$5,700 is equally divided between the parties. The arrangement as to the standard Pullman sleepers is similar except that the Pullman Company receives the first \$7,250 per car on an average and the railway company the next \$1,500 average per car, any excess over \$8,750 per car being equally divided between the two companies.

The testimony shows that for the period during which the car was in service its average daily number of passengers was 5.6, and the

average per car-mile revenue earned by the railway company was 18.4 cents. As a result of the experiment the railway company asserts it suffered a considerable loss, being obliged to pay the Pullman Company a substantial sum over and above the receipts of the cars.

It appears that other routes offer no practical or satisfactory service in the way of all-night sleeping cars that may be availed of by those who would patronize the cars which were discontinued. At the time the service was maintained the capital was located at Guthrie, and it is asserted by defendants that because of that fact the service secured patronage then which it would not now enjoy. Since the discontinuance passengers traveling between Guthrie and Canadian have the same train service as before its installation; that is, passengers going or coming make the same connection at Kiowa, but have no sleeping-car accommodations between Guthrie and Kiowa. The defendants' witness, however, testified that passengers from Guthrie to Canadian could usually get Pullman accommodations on the train leaving Kiowa about 10.30, and when coming from Canadian could occupy a sleeping car until Kiowa is reached, about 4 a. m. These facilities, it is claimed, are reasonable for the volume of travel. No claim is made by the complainant that any undue discrimination exists, nor is there any evidence to that effect.

The complainant alleged the capacity of the parties, the right and authority of the petitioner, and the subjection of defendants to the act to regulate commerce, which allegations are admitted. It does not in terms allege a violation of the law or any particular section thereof, but simply alleges in respect of facts set forth showing the former maintenance of the sleeping-car service and the discontinuance thereof, all of which is admitted by the defendants, that—

By reason of the premises the defendants are and each of them is subjecting the citizens of Oklahoma, who travel between Guthrie, Okla., and Canadian, Tex., and the intervening towns traversed by the lines of railroad heretofore described, to great inconvenience and an unnecessary lack of the accommodations to which they are entitled, in failing to provide such sleeping-car service with said trains; and that on account of the run of said trains Nos. 442 and 201, covering the entire night, leaving Guthrie, Okla., at 5 o'clock p. m. and arriving at Canadian, Tex., at 5.15 a. m. of the next day, the traveling public is entitled to such service as a reasonable accommodation and convenience for their proper comfort in going from Guthrie, Okla., Enid, Okla., Kiowa, Kans., Alva, Okla., and other towns along such lines when traveling to the west over said trains in the direction of Amarillo, Tex.

Without raising any question of the sufficiency of the petition to state a violation of the law, and aside from any question of jurisdiction with which this Commission may be vested by virtue of the broad provisions of the law, we are of the opinion that the facts proved are not such as, assuming we had jurisdiction over the subject matter of the complaint, call for the exercise of any regulative power under the statute. The complaint will therefore be dismissed.

No. 4284.
MULTNOMAH LUMBER & BOX COMPANY ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 19, 1912. Decided November 11, 1912.

Rates on box lumber and box shooks from Portland and Astoria, Oreg., to California and other interstate destinations found to be unjust and unduly discriminatory as compared with rates on same commodity to same destinations from Glendale and Cottage Grove, Oreg. Joint rates prescribed from Astoria to the same destinations. Reparation awarded.

Joseph N. Teal for complainants.

C. A. Hart and Carey & Kerr for Spokane, Portland & Seattle Railway Company.

H. A. Scandrett, James G. Wilson, and *C. W. Durbrow* for Southern Pacific Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainants manufacture box shooks and other forest products at Portland and Astoria, Oreg. Complaint alleges that defendants' rates for the transportation of box lumber and box shooks from Portland and Astoria to destinations in California and other states, as shown in Southern Pacific Company's tariff, I. C. C. No. 3409, of which Marysville, Sacramento, Fresno, and Los Angeles, Cal., and Reno, Nev., may be taken as representative, are unjust, unreasonable, and unduly discriminatory against complainants, and in favor of box-shook manufacturers at other points on the lines of the Southern Pacific Company, in Oregon and in northern California.

It is alleged that the rates complained of are unjustly discriminatory against complainants because they are generally higher from Portland and from Astoria to the destinations named than are the rates on lumber, while from the competing points of production referred to the rates on box lumber and box shooks are generally lower than on lumber, and in that they are relatively higher, service and value of service considered, than the rates upon the same commodity from competing mills.

25 I. C. C.

The establishment of through routes and joint rates from Astoria, and of reasonable and nondiscriminatory carload rates from Astoria and Portland to the destinations shown in said Southern Pacific tariff is sought. Reparation is prayed for upon shipments which moved within two years prior to the date of filing this complaint.

Defendants assert that the rates on lumber from Portland and from Astoria are controlled by water competition and are therefore lower than they would otherwise be. They say that this water competition is not as strong on box shooks as on lumber and therefore it is not necessary for them to make the box-shook rates as low as the lumber rates. It was agreed that the testimony and exhibits in *Oregon & Washington Lumber Manufacturers' Asso. v. S. P. Co.*, 21 I. C. C., 389, might be considered in the instant case.

Complainants manufacture box shooks from spruce lumber; in northern California and southern Oregon they are manufactured from pine. Pine shooks command a higher price in California than do spruce shooks.

It appears that very generally rates on box shooks are the same as or lower than upon lumber between the same points. The rates complained of seem to be the only exception to this rule in that section. In the absence of commodity rates defendants' classification provides the same rating for lumber and box shooks. Spruce box shooks are made from a low grade of lumber, are dried, bundled and tied together before shipment, and the value of a carload of such shooks is from \$75 to \$200 less than that of a carload of finished lumber.

Reference is made to the necessity of loading box shooks in closed cars, but this is also true of high-grade, dry and finished lumber, and it is also true that refrigerator cars, which could not ordinarily be used for shipments of lumber, can be and are used for box shooks.

California consumes large quantities of box shooks and is a desirable market therefor. Manifestly, complainants are entitled to compete in that market with other manufacturers served by the same defendants and to have reasonable and nondiscriminatory rates.

The tariff carload minimum is 30,000 pounds on both lumber and box shooks. Statements presented in the record show that complainant Multnomah Lumber & Box Company shipped from Portland over the Southern Pacific lines to California points between August 8, 1909, and June 21, 1912, 142 carloads of box shooks, the average loading per car of which was 42,456 pounds. From August 8, 1909, to August 2, 1910, this complainant shipped over that line 106 carloads of box shooks, of which 1 weighed less than 30,000 pounds; 48 weighed between 30,000 and 40,000 pounds; 35 weighed

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between 40,000 and 50,000 pounds; 18 weighed between 50,000 and 60,000 pounds; and 4 weighed more than 60,000 pounds.

During the year 1911 the same company shipped 15 carloads of dried, finished lumber over the same line, of which 5 weighed between 30,000 and 40,000 pounds and 10 weighed between 40,000 and 50,000 pounds.

Another lumber company shipped, in the months of April, May, and June, 1910, 21 cars of dried, finished lumber, of which 6 weighed less than 30,000 pounds; 12 weighed between 30,000 and 40,000 pounds; and 3 weighed between 40,000 and 50,000 pounds.

It seems clear that the loading of box shooks is at least as heavy as the loading of dry, finished lumber, which takes the lower rate.

In numerous cases the Commission has held that poles, piling, ties, box shooks, and other forest products should not be subject to higher rates than lumber.

In *Oregon & Washington Lumber Manufacturers' Asso. v. S. P. Co.*, *supra*, we declined to disturb the carriers' adjustment of rates from Portland on green, rough lumber because it appeared that such cheaper grades of lumber can be and generally are shipped by water. Box shooks do not move from Portland and Astoria in cargo lots, partially because they are not as desirable as lumber for cargo and partially because they are not bought and sold in cargo lots. Certainly they do not move by water as freely or in such quantities as does lumber.

There is, however, another and distinct allegation of unjust discrimination against complainants.

Defendant Southern Pacific Company groups the points of origin on its lines in northern California and in Oregon.

Group 3 includes points in Oregon from Portland to Saginaw, both inclusive.

Group 5 includes points in Oregon from Cottage Grove, just south of Saginaw, to and including Reuben.

Group 4 includes points in Oregon from Glendale, just south of Reuben, to and including Gregory, the last station in Oregon on that line.

As illustrative, the carload rates in the table following, stated per ton of 2,000 pounds, are taken from Southern Pacific tariffs, I. C. C. Nos. 3409 and 3328.

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Carload rates, per ton of 2,000 pounds.

To—	From Portland-Saginaw group.		From Cottage Grove-Reuben group.		From Glendale-Gregory group.		From Cole, Cal.	
	Lumber.	Box shooks.	Lumber.	Box shooks.	Lumber.	Box shooks.	Lumber.	Box shooks.
Marysville, Cal.....	\$5.00	\$6.00	\$5.00	\$4.65	\$5.00	\$4.15	\$3.30	\$3.80
Rosedale, Cal.....	5.00	6.00	5.00	4.65	5.00	4.15	3.75	3.75
Truckee, Cal.....	8.00	8.00	8.00	8.00	8.00	7.60	3.10	3.10
Floriston, Cal.....	8.00	8.00	8.00	8.00	8.00	7.60	7.00	7.00
Calvada, Cal.....	8.00	8.00	8.00	8.00	8.00	7.60	7.00	7.00
Verdi, Nev.....	8.00	8.00	8.00	8.00	8.00	7.60	6.85	6.85
Reno, Nev.....	8.00	8.00	8.00	8.00	8.00	7.70	7.25	7.25
Sparks, Nev.....	8.00	8.00	8.00	8.00	8.00	8.00	8.00	8.00
Sacramento, Cal.....	5.00	6.00	5.00	4.65	5.00	4.15	3.75	3.75
Suisun, Cal.....	5.00	6.00	5.00	4.65	5.00	4.15	4.50	4.50
San Francisco, Cal.....	5.00	6.00	5.00	4.65	5.00	4.15	3.10	3.10
Stockton, Cal.....	5.00	6.00	5.00	4.65	5.00	4.15	3.75	3.75
Tracy, Cal.....	5.00	6.00	5.00	4.65	5.00	4.15	4.00	4.00
Merced, Cal.....	5.35	6.35	5.35	5.85	5.35	5.35	5.25	4.85
Fresno, Cal.....	6.70	7.70	6.70	5.85	6.70	5.35	5.25	4.85
Bakersfield, Cal.....	8.45	9.45	8.45	7.50	8.45	7.00	8.00	6.50
Mojave, Cal.....	9.50	10.50	9.50	7.50	9.50	7.00	8.00	6.50
Los Angeles, Cal.....	9.50	10.50	9.50	7.50	9.50	7.00	6.50	6.50
San Bernardino, Cal.....	9.50	10.50	9.50	7.50	9.50	7.00	6.50	6.50
Redlands Junction, Cal.....	9.50	10.50	9.50	7.50	9.50	7.00	6.50	6.50
Redlands, Cal.....	9.50	10.50	9.50	7.50	9.50	7.00	6.50	6.50
Palm Springs, Cal.....	11.00	11.00	11.00	10.60	11.00	10.10	8.00	8.00
Thermal, Cal.....	11.00	11.00	11.00	10.60	11.00	10.10	8.00	8.00
Imperial Junction, Cal.....	11.00	11.00	11.00	10.60	11.00	10.10	8.00	8.00
Calxico, Cal.....	11.75	11.75	11.75	11.35	11.75	10.85	9.95	9.70
Flowing Well, Cal.....	11.00	11.00	11.00	11.00	11.00	11.00	8.00	8.00

From this it will be seen that in almost every instance the rates on box shooks are the same as or lower than the rates on lumber, except from the Portland group.

From Cole, Cal., to Sacramento, the rates on lumber and box shooks are \$3.75 per ton; from Glendale, Oreg., 105 miles north of Cole, the rates are \$5 per ton on lumber and \$4.15 per ton on box shooks; from Cottage Grove, 224 miles north of Cole, these rates are \$5 and \$4.65 per ton, respectively, on lumber and box shooks; from Portland, 368 miles north of Cole, the rates are \$5 and \$6 per ton, respectively, on lumber and box shooks.

From Cole to Fresno, Cal., the rates are \$5.25 and \$4.85 per ton, respectively, on lumber and box shooks; from Glendale they are \$6.70 and \$5.35 per ton, respectively; from Cottage Grove they are \$6.70 and \$5.85 per ton, respectively; and from Portland they are \$6.70 and \$7.70 per ton, respectively.

From Cole to Los Angeles the rates are \$6.50 per ton on both lumber and box shooks; from Glendale they are \$9.50 and \$7 per ton, respectively; from Cottage Grove they are \$9.50 and \$7.50 per ton, respectively; and from Portland they are \$9.50 and \$10.50 per ton, respectively.

From Cole to Reno, Nev., the rates are \$7.25 per ton on both lumber and box shooks; from Glendale they are \$8 and \$7.70 per ton, respectively; and from Cottage Grove and Portland they are \$8 per ton on both lumber and box shooks. Weed is 54 miles south

of Cole. The rates on box shooks from Weed are in some instances lower than from Cole, but in many instances they are the same. The rates from Cole and Weed to other California points are intrastate and are referred to as illustrative.

From the Glendale-Gregory group in Oregon to Marysville, Cal., which point is intermediate to most of the California destinations and 367 miles from Glendale, the rate on box shooks is 85 cents per ton higher than from Cole, just south in California, for an added distance of 105 miles from Cole to Glendale; from the Cottage Grove-Reuben group the rate is 50 cents per ton higher than from the Gregory-Glendale group for an added distance of 118 miles from Glendale to Cottage Grove; and from the Portland-Saginaw group it is \$1.35 per ton higher than from the Cottage Grove-Reuben group for an added distance of 144 miles from Cottage Grove to Portland. The rate per ton per mile tapers with the distance for the Cottage Grove group, but that principle is not applied to the Portland group.

The rate on box shooks from Portland to Cottage Grove is \$2.40 per ton, and from Cottage Grove to Los Angeles it is \$7.50 per ton, an aggregate of \$9.90. The through rate from Portland to Los Angeles is \$10.50 per ton, 60 cents higher than the combination of intermediate rates on Cottage Grove. It is said that numerous such instances exist.

The differential in rates against Portland as compared with Cottage Grove at Marysville, distant from Portland 630 miles and from Cottage Grove 486 miles, is \$1.35 per ton, while at Los Angeles, 1,123 miles from Portland and 978 miles from Cottage Grove, it is \$3 per ton, the differential against Portland increasing as the length of the haul increases. The Portland-Los Angeles rate yields 9.4 mills per ton per mile as against 7.7 mills per ton per mile for the shorter haul from Cottage Grove to Los Angeles. The revenue per ton per mile is greater from Portland, where it is claimed rates are affected or controlled by water competition, than from Cottage Grove, where no water competition exists.

The following statement is self-explanatory:

From—	To—	Miles.	Rate per ton.	Rate per ton per mile.
				<i>Mills.</i>
Portland.....	Marysville.....	630	\$6.00	9.5
Cottage Grove.....	do.....	486	4.65	9.5
Portland.....	Stockton.....	725	6.00	8.3
Cottage Grove.....	do.....	581	4.65	8.0
Portland.....	Fresno.....	847	7.70	9.1
Cottage Grove.....	do.....	703	5.85	8.3
Portland.....	Los Angeles.....	1,123	10.50	9.4
Cottage Grove.....	do.....	979	7.50	7.7
Cole.....	do.....	765	6.50	8.6
Portland.....	Redlands.....	1,189	10.50	8.9
Cottage Grove.....	do.....	1,040	7.50	7.2
Cole.....	do.....	821	6.50	7.9

Adverse grades and conditions of transportation on the Southern Pacific line are urged in justification of the Portland rates. But they are exactly the same as those which are met in the transportation from the Cottage Grove or Glendale group, except for the additional distance of 144 miles in an open and substantially level country from Cottage Grove to Portland. They are also the same as those met in the transportation of lumber from these several points. No adverse conditions are suggested except on the line south of Ashland, Oreg.

The rates on box shoocks from the Cottage Grove and Glendale groups have been voluntarily established.

The rate from Portland to San Francisco on box shoocks is \$6 per ton, and from San Francisco to Marysville it is \$4 per ton. From Portland to Marysville the rate is \$6 per ton. The impossibility of shoocks moving from Portland to Marysville via water to San Francisco is apparent. It is stated that inland rates from San Pedro are also such as to prevent movement via water from Portland through San Pedro. The absence of any uniform principle in the construction of defendants' rates on box shoocks is apparent. It is said that after establishing the rates from northern California points with relation to the rates from eastern California and western Nevada, the rates so established from the northern California points were extended to the southern Oregon points, with due consideration for the added distances. We see no reason why the same principle should not extend farther and include the Portland-Astoria group.

Considering the whole record, we are of the opinion, and find, that defendants' rates on box lumber and box shoocks in carloads from Portland, Oreg., to the interstate destinations named in said Southern Pacific tariff, I. C. C. No. 3409, are, and for the future will be, unjustly discriminatory against Portland and complainants to the extent that they exceed the rates on box lumber and box shoocks in carloads to the same destinations from Cottage Grove, Oreg., by more than 50 cents, or the rates from Glendale, Oreg., by more than \$1, per ton of 2,000 pounds. So long as the grouping system is continued for the points in southern Oregon it manifestly ought to be continued for Portland and points grouped therewith, and we think that the rates from other points in the Portland group should not be higher than from Portland.

The rates from Astoria are made in combination on Portland by adding to the rates named in said Southern Pacific tariff the local rate of $7\frac{1}{2}$ cents per 100 pounds from Astoria to Portland, shown in Spokane, Portland & Seattle tariff, I. C. C. No. 83. The rate on lumber from Astoria to Portland is 5 cents per 100 pounds.

There is a through route from Astoria to the destinations in question, but there are no joint rates. It appears that the Spokane,

Portland & Seattle Railway, which owns the line from Astoria to Portland, has voluntarily established with its connections through routes and joint rates on box shooks to destinations generally other than to the points in California and other states here complained of. The division which the Spokane, Portland & Seattle road gets out of such joint rates from Astoria for the haul to Portland is generally, if not uniformly, 5 cents per 100 pounds. Complainants requested defendants to establish joint rates to points on the Southern Pacific in California and other states and were refused.

We see no reason why complainants should not have joint rates from Astoria to the destinations referred to, and we are of the opinion that such joint rates should be less than the full combinations on Portland.

We find that complainants are entitled to the establishment of joint rates on box lumber and box shooks in carloads via the Spokane, Portland & Seattle Railway and the Southern Pacific Company's lines, from Astoria via Portland, to the interstate destinations named in said Southern Pacific tariff, I. C. C. No. 3409, and that such joint rates from Astoria should not, and shall not, in any case exceed the rates contemporaneously charged from Portland to the same destination by more than 5 cents per 100 pounds.

We are of opinion, and find, that all charges which have been assessed against complainants on carload shipments of box lumber and box shooks from Portland, Oreg., to the interstate destinations in question from and after August 3, 1909, have been unjust and unduly discriminatory to the extent that they have exceeded the contemporaneous charges on like shipments to the same destinations from Cottage Grove, Oreg., by more than 50 cents per ton of 2,000 pounds, and that complainants are entitled to reparation on that basis.

We are of opinion, and find, that all charges on complainants' carload shipments of box shooks from Astoria, Oreg., via defendants' lines to the interstate destinations in question from and after August 3, 1909, have been unjust and unduly discriminatory to the extent that they exceeded the contemporaneous rates on box lumber and box shooks from Cottage Grove, Oreg., by more than \$1.50 per ton of 2,000 pounds, and that complainants are entitled to reparation on that basis.

An order will be entered in accordance with these conclusions except in the matter of reparation. Complainants may present to defendants for verification itemized statements of the shipments upon which reparation is due under these findings, and upon presentation of such agreed statements, orders for reparation will be entered.

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No. 3002.
THE TRANSIT CASE.

Decided November 12, 1912.

Questions relating to the Commission's prior report and order herein in reference to the policing and regulation of grain and grain products, wherever carriers in their tariffs provide transit privileges thereon, considered, and definite conclusions announced.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, Commissioner:

In its report of June 5, 1912, 24 I. C. C., 340, the Commission entered an order effective August 15, 1912, directing all carriers subject to the act to regulate commerce to enforce certain rules as to the policing and regulation of grain and grain products wherever carriers in their tariffs provide transit privileges in conjunction with the interstate movement of such commodities. Respondents have published their respective tariffs presumably in accordance with their interpretation of the requirements of this order.

The lines in trunk line, central freight association, and south-eastern and Mississippi Valley territories have adhered to or adopted the publication of uniform rules and the delegation of policing to their respective inspection bureaus, thereby bringing about more effective policing and uniformity of operation.

On the Missouri River an inspection bureau has been in existence for several years, but its operation is encumbered by so many diversified rules of particular carriers, and so complex and voluminous a system of reporting, frequently differing with each line, that the policing of transit tonnage is an absolute hardship upon the shipper. Instead of reporting to one inspection office, a grain dealer or miller is compelled to report to each particular carrier, and upon forms or blanks peculiar to such carrier. The same conditions exist in the territory northwest of Chicago, where, for the section as a whole, no bureau whatever polices the transit. One miller, whose tonnage was handled by four different roads, was required to make approximately 60 reports each day. The carriers in these sections have subjected themselves to well-merited criticism for their failure jointly to handle this feature of transit in a uniform and

intelligent manner, and we are convinced that the shippers in these sections are entitled to relief. Where efficient transit bureaus are in operation but a single report to a transit inspector is required, and no complaint is heard. In our last report we commended the establishment of transit bureaus, deeming this the most practical method of policing, making at once for simplicity, uniformity, and efficiency. It is but fair to say that better results can be obtained through the medium of such an agency interested more in the uniform application of rules than the matter of railroad revenue or tonnage. Moreover, such an institution, properly constituted, is better adapted to the disposition of new situations which, at least for some time, will continue to arise.

In dealing with the question of reports we said that transit houses should be required to report daily the total in-and-out movement of all grain if any of it were to be accorded a transit privilege. Instances arise in which a transit house receives or ships several kinds of grain—say, wheat, corn, and oats—but the transit privilege applies only to wheat. In such cases no report is necessary as to the corn and oats, but is essential as to all wheat, whether transit or nontransit, handled through the house. In other words, the daily report need cover only the commodity or commodities upon which a transit privilege is granted but, as to those commodities, must include both the transit and nontransit. Again, on days when the transit house receives or ships no grain of a kind upon which transit is accorded, and the report would be but a duplicate of that made for the preceding day, it will be sufficient if the report merely state that fact.

Complaint has been made that our order required that too great a percentage be deducted to cover the loss incident to the drying of corn. The order makes no final arbitrary deduction, but specifically provides that the actual outturn of the grain shall be credited to the miller in his transit account not less than four times a year, quarterly, leaving it optional with the miller and the carrier to make the actual balance monthly, weekly, or daily, as the exigencies of the particular case may require.

Nothing was said in the order in connection with the drying of wheat. It appears that some wheat is of such a character that it is necessary to subject it to a drying process, thereby entailing a loss in weight. This loss can be taken care of by making the proper deductions at the time of balancing the tonnage account, not less than four times a year, quarterly.

Where, after cleaning and the removal of screenings, grain that has become mixed as in planting or harvesting, is put through a separating process, it was found that the policing authority could ascertain from the records the actual result of the separation, and

could credit the grains as separated against the representative billing, permitting shipments to move out properly described.

Complaint has been made that subsection (b) of rule 14 of central freight association transit circular can be so applied as to permit the manipulation of expense bills. Paul P. Rainers tariff, I. C. C. No. 290, shows subsection (b) as follows:

(b) It is not expected that the identity of each carload of grain or grain products can or will be preserved in the process of milling or malting, but it is not permissible to make any substitution that impairs the integrity of the through rate; substitution, however, is not accomplished under this rule when grain or grain products are mixed or blended at the transit point for milling or grading purposes and inbound billing covering carloads of the grain entering into the blend is surrendered in the same ratio as was observed in the blending, and the through rate (subject to rule 10) applied from the point of origin shown on the inbound billing surrendered to destination of the grain products. To illustrate: Ten carloads of wheat may be shipped from three different rate territories (say 6 cars of spring wheat from the Dakotas, 2 cars of hard wheat from Kansas, and 2 cars of soft winter wheat from Illinois), mixed or blended, and may be forwarded in full carloads at the through rate lawfully applicable from point of origin of the wheat shown by corresponding inbound billing surrendered, as provided in rule 12, it being understood that in the selection of inbound billing to match against outbound shipments, shippers, millers, or maltsters will select 6 Dakota, 2 Kansas, and 2 Illinois representative inbound bills and not select 10 inbound bills from the lowest rate territory.

While we shall keep this protest and rule under consideration, on the showing thus far made we do not feel justified in condemning the rule at this time, preferring to watch the result of its trial under a rigid policing.

Probably the most serious question raised by the order relates to what is known as the division of the product in the milling of grain. Certain mills have been shipping out flour on wheat pound for pound. This necessarily involves a substitution at the mills and the practice was prohibited. The individual respondents are now requiring the maintenance of the proper ratio of product to inbound grain for their separate lines of railway. The Commission is asked to modify its rule so as to permit the average ratio to be maintained for the mill as a whole instead of each particular line. This is to enable the millers to ship out their flour to markets upon one line of railroad and their offal or feed to points upon another line. That for commercial reasons this is frequently desirable we do not doubt, but in the absence of proper tariff publication to which all carriers participating in the in-and-out movements are parties an illegal substitution would result. Rates upon grain moving through a transit point upon a transit privilege and milled at the transit point are assessed in any one of several ways. Some of the carriers charge the local rate to the milling point, and, when the milled product is billed out, refund

the local rate and bill the product, as such, from point of origin of the grain or rate-basing point to destination of product. Other carriers reduce the locals originally collected to the milling point to a figure which, added to the rate charged beyond the milling point, equals the through rate via the milling point from origin to destination. Again, the carrier may bill the grain at the local rate subject to adjustment to the through-rate point of origin or rate-basing point to destination by claim. At many of the points there is a supply of nontransit grain and a disposition of nontransit products. Where the through rates applicable to the various through routes via the transit point vary the opportunity for substitution is clearly apparent. If, therefore, flour can be shipped, pound for pound, for wheat received by the surrender of no particular billing, the integrity of the through rate is affected, and tonnage of flour which could not have been produced covered by the inbound billing surrendered is substituted. The same substitution would be present in the case of the by-products. If accounts are kept of each kind and character of grain reaching the milling point via each road, and care is taken that the outbound shipments in a given account are made either over the road bringing the grain into the milling point or over a road forming part of the through route with the inbound road, it would not be absolutely necessary to preserve the ratio on each individual car of grain or as to each line of railroad passing through the transit point. The lawful character of the operation of transit in this connection is largely a transportation question and one that for all practical purposes the carriers can take care of by so publishing their rates as to make lawful what would otherwise be clearly unlawful. If the carriers have permitted business to develop at points on their lines through the enjoyment of illegal practices it would be natural to suppose that they would now do all in their power to bring such business within the pale of the law with the least danger of loss to their patrons and the consequent depletion of their own revenues. These movements which are now illegal can be made legal by the carriers if they will adjust their through routes and rates so as to provide specifically for the movement of products in the same manner that they have heretofore moved without tariff authority. Moreover, the carriers could so adjust their rates that the millers would not be required to pay in the aggregate higher transportation charges upon business done in accordance with the law than they did on movements involving illegal substitutions.

Some question has arisen as to the effect of the order upon tonnage that had begun to move prior to August 15, 1912. The Commission's order related only to policing, and in that respect affected all tonnage upon which transit privileges were, or are, claimed on or after August 15. The rate in effect at the time the shipment began

to move is the rate lawfully applicable. In case a privilege had been enjoyed prior to the date of the order, a tariff canceling such privilege does not affect tonnage that began to move prior to the cancellation, but such tonnage is subject to the policing requirements. *Interstate Remedy Co. v. American Express Co.*, 16 I. C. C., 436.

No. 4768.

W. A. GRIFFING ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

No. 4677.

PETMECKY COMPANY ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY OF
TEXAS ET AL.

Submitted September 13, 1912. Decided November 11, 1912.

Complainants attack the rates and classification of motor cycles in less than car-loads at two and one-half times first class between specified points in western classification territory as unreasonable; *Held*, That a rate in excess of one and one-half times a just and reasonable first-class rate from and to the points herein involved is unreasonable, and reparation will be awarded on this basis.

G. M. Stephen for complainant.

R. C. Fyfe for Western Classification Committee.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

E. J. Seymour for Chicago & North Western Railway Company.

J. G. Wilson and *L. T. Wilcox* for Southern Pacific system and others.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

F. G. Wright for Missouri Pacific system and others.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The rating of motor cycles in western classification territory has been the occasion for dispute between shippers and western carriers since 1908. The Commission has already considered the matter in three previous cases. Since the cases to be dealt with in this report raise the same issue, they can best be disposed of together and in the light of our previous opinions, together with the testimony more recently taken.

The western classification at present rates motor cycles, less than carload, at two and one-half times first class. The cases now before us involve 94 shipments between points in western classification territory, and reparation aggregating about \$375 is asked. The complainants presented little evidence, but chose to submit the present cases on the decisions in the *Merchants Traffic Association case*, 13 I. C. C., 283, and in the *Mead Auto Cycle Company case*, Unreported Opinion No. 435. The defendants, however, insist that the Commission did not have all the facts before it when it decided those cases, and ask particularly that the testimony recently taken in *Architects & Engineers Supply Co. v. A., T. & S. F. Ry. Co.*, Docket No. 4315, be considered.

After a careful reexamination of all the facts, it is our view that the rating on motor cycles, less than carloads, throughout western classification territory, should be no higher than that on bicycles. We have jurisdiction here to deal only with those carriers which are parties to these proceedings, and our order will therefore apply only to them. Our finding is that a rate on motor cycles, less than carloads, boxed or crated, in excess of one and one-half times a just and reasonable first-class rate from and to the points herein involved is unreasonable, and an order will be issued requiring the defendants to maintain for the future rates not in excess of one and one-half times the current first-class rates.

Some of the claims for reparation in each of the present cases are based not only on the allegation that rates in excess of one and one-half times first class were unreasonable, but also on the ground that the first-class rate to be used as a basis should be the rate which had been prescribed by the Commission in the *Burnham, Hanna, Munger case*, 14 I. C. C., 299, previous to the shipments in question, but which, owing to proceedings in the courts, did not become effective until October 26, 1910, which was subsequent to these shipments. Our finding of unreasonableness is based on the conclusion that the rating on motor cycles should not exceed that on bicycles. It is clear that the rates charged on bicycles after November 10, 1908, following the Commission's order in the *Burnham, Hanna, Munger case*, *supra*, should not have exceeded one and one-half times the first-class rate fixed therein, and in view of our present findings the motor-cycle rate should have been the same as the rate on bicycles.

Reparation is claimed on a large number of shipments, and it does not clearly appear from the records what the total amount collected was or what the amount of reparation should be. The complainants and defendants will therefore be expected to prepare a statement upon which they can agree, showing the exact amount of reparation due the several complainants, in accordance with our findings herein, and when such statement is filed and approved by the Commission an order of reparation will be issued.

No. 2518.

HUMBOLDT STEAMSHIP COMPANY

v.

WHITE PASS & YUKON ROUTE, CONSISTING OF THE
PACIFIC & ARCTIC RAILWAY & NAVIGATION COM-
PANY, BRITISH COLUMBIA-YUKON RAILWAY COM-
PANY, BRITISH-YUKON RAILWAY COMPANY, AND
BRITISH-YUKON NAVIGATION COMPANY, LIMITED.

Submitted October 15, 1912. Decided November 11, 1912.

On petition for the establishment of through routes and joint rates from Seattle, Wash., to Dawson, Yukon Territory, and to other points in Canadian territory; *Held*, That the Commission has no jurisdiction of railroad and steamship lines located, owned, and operated entirely in an adjacent foreign country; *Held further*, That the wharf used by defendants at Skagway, Alaska, is an instrumentality of interstate commerce used by defendants.

Charles D. Drayton and Charles F. Munday for complainant.

Royal A. Gunnison and O. L. Dickeson for Pacific & Arctic Railway & Navigation Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

On first hearing of this complaint defendants declined to introduce any testimony, and stood squarely on the position that they were not subject to the act to regulate commerce or to the jurisdiction of the Commission. That contention was upheld. 19 I. C. C., 105. Subsequently the Supreme Court decided that the provisions of our act and the jurisdiction of the Commission embraced carriers in the Territory of Alaska of the classes specified in the act as subject to its provisions. 224 U. S., 474. Thereupon the case was set down for hearing on the facts.

Complainant is engaged in the transportation of persons and property by water between Seattle, Wash., and Skagway, Alaska, and other points. Defendants own and operate a line of railway from Skagway, Alaska, to White Horse, Yukon Territory, and a line of steamboats on the Yukon River from White Horse to Dawson, Yukon Territory. Complainant alleged unjust discrimination in that defendants joined in through routes and joint rates with certain

other steamship companies also plying between Seattle and Skagway, and refused to continue or renew similar arrangement with complainant. Unjust discrimination was alleged also because freight transported by complainant and defendants was subjected to higher wharfage charges at Skagway than were assessed against like traffic transported by competing steamship lines and defendants. It was and is alleged that the wharf used by defendants at Skagway was and is an instrumentality or facility of carriage owned or controlled in whole or in part by defendants.

It appears that since the former hearing the management of defendants has been changed and that there is not now, and for some time has not been, any discrimination against complainant either in the matter of through routes, joint rates, or wharfage charges at Skagway. There are not now, and for some time have not been, any joint rates between steamship lines reaching Skagway and defendants. There is an open through route via defendants' lines. The rates and charges are made up of the separately established rates and charges of the steamship lines and of defendants. They are the same for complainant as for other connecting steamship lines, as are also the wharfage charges at Skagway. There is no complaint as to the reasonableness *per se* of the wharfage charges or of any of defendants' charges.

The original complaint prayed that defendants be required to file their tariffs with the Commission. It is admitted that this has now been done. That prayer is therefore out of the case.

Complainant's prayer for establishment of joint rates has been waived, and complainant says that if under the law defendants can not in the future deny to it a continuance of the service as now given or of nondiscriminatory wharf charges at Skagway, its petition for establishment of a through route is accomplished, but if any order of the Commission is necessary to give permanency to existing conditions such order is desired.

As shown in the title, complaint is against the White Pass & Yukon route, which consists of four separate and distinct corporations. It appears that the "White Pass & Yukon Route" is a trade name, and that there is no corporation of that name. This route is made up of the properties of (a) the Pacific & Arctic Railway & Navigation Company, a West Virginia corporation with head offices at Chicago, Ill., which owns 20 miles of railroad running from Skagway to White Pass, the boundary line between Alaska and British Columbia; (b) The British Columbia-Yukon Railway Company, incorporated under the laws of British Columbia, with principal offices at Victoria, B. C., which owns some 33 miles of road from White Pass to Pennington, the boundary line between British Columbia and Yukon Territory;

(c) The British-Yukon Railway Company, incorporated under the laws of the Dominion of Canada with head offices at Ottawa, Canada, which owns the line of railroad from Pennington to White Horse; (d) The British-Yukon Navigation Company, Limited, incorporated under the laws of British Columbia, with head offices at Vancouver, B. C., which owns and operates steamboats between White Horse and Dawson, Yukon Territory, and between Caribou, Yukon Territory, and Atlin, B. C.

The property of the Pacific & Arctic Railway & Navigation Company is all in the Territory of Alaska. The property of the British Columbia-Yukon Railway Company is all in British Columbia; that of the British-Yukon Railway Company is all in Yukon Territory; that of the British-Yukon Navigation Company is all in British Columbia and Yukon Territory.

There is a White Pass & Yukon Railway Company, Limited, of London, England, which is a holding company for the owners of the shares, bonds, and debentures of the several properties that make up the so-called White Pass & Yukon route.

While maintaining these separate corporate existences these companies are, for convenience and economy, operated under one management. The managing officers are separately elected by the several boards of directors of the constituent companies. The White Pass & Yukon Railway Company, Limited, of London, has no part in the operation or management of the properties.

Defendants' present position is that the Commission has jurisdiction of the Pacific & Arctic Railway & Navigation Company, all of whose property is, as stated, in the Territory of Alaska, and no jurisdiction over any other of the named defendants, whose properties are in foreign territory and owned by foreign corporations.

The exact relation existing between defendants and the wharf company at Skagway is somewhat confused in the record. It appears, however, that in January, 1899, a contract was entered into between the Moore Wharf Company of Skagway, which consisted of the Alaskan & Northern Territories Trading Company, J. Bernard Moore, and William Moore, parties of the first part, and the Pacific & Arctic Railway & Navigation Company, with its several extensions, collectively known as the White Pass & Yukon Railway Company, and the Pacific Contract Company, Limited, parties of the second part. This instrument recites that said railways have and operate a railway from Skagway through the White Pass into Canadian territory; that it is necessary for said railway to connect at Skagway with tidewater at the most convenient point; that such connections can most conveniently be secured by means of the wharf and property of the Moore Wharf Company; and it is therefore agreed that in

consideration of \$1 and other valuable considerations the wharf company grants to the railway company the use of its wharf, approaches thereto, and warehouses and other buildings thereon, necessary to carrying on the business of shipping freight from said wharf over said railway. The agreement is to continue for a period of 30 years from date thereof. The wharf company agrees to pay the railway company 25 per cent of the gross wharfage and warehouse dues on all goods and live stock, except as provided in the contract, billed, or passing, or in transit over the railway and passing over the wharf. Supplies, material, and equipment for use in construction or operation of the railway or extensions thereof in Canadian territory is free from all wharfage and warehouse dues, excepting stevedore charge and cost of handling.

The local business of Skagway is excluded from the agreement. It is provided that the rates of wharfage shall not exceed, without the consent of the railway company, \$1.75 per ton during the first five years; \$1.25 per ton during the second five years; and \$1 per ton thereafter.

It is provided that the railway company may construct and own additional wharf room adjoining the Moore wharf site, but that such new wharf shall be used only for such heavy machinery, coal, timber, ore, and similar freight which it may be necessary to handle from ship's tackle into cars.

The above agreement was modified by an agreement between the North Pacific Wharves & Trading Company which acquired ownership of the wharf, and the Pacific & Arctic Railway & Navigation Company, continuing the agreement previously existing and above referred to, with certain modifications as to the rates of wharfage on certain specified classes of freight. It does not appear that the original agreement, that the railway company should receive 25 per cent of the gross wharfage and warehouse dues on all freight except that specifically excluded which passes over the wharf and the railway, was rescinded.

It is testified that no payments have been made by the wharf company to the railway company under this agreement for a number of years. The manager of the wharf company, who has held that position since March, 1910, and who has been connected with it since its construction, testified that he had no knowledge of any relationship of owner or lessee existing between the wharf company and the railway company; that the railway company does not exercise or attempt to exercise any control or authority in the management of the wharf; that he has charge of the disbursement of the revenues of the wharf company; that he has not paid the railway company anything from those revenues since 1904; that the revenues

in excess of the necessary expenditures made by him are sent to the president of the North Pacific Railways & Trading Company at Victoria, B. C. Some correspondence relative to the contract between the railway and the wharf company was not produced because it was in the hands of the court at Juneau, but from the record we are convinced that while the wharf company is not a carrier subject to the act the wharf itself is an instrumentality of interstate commerce used by defendant Pacific & Arctic Railway & Navigation Company. This defendant now publishes its rates from Skagway to White Pass, applicable on through shipments, which rates include specifically the wharfage charges. This fact and the requirements of the act would seem to protect complainant against any unjust discrimination as to wharfage charges.

Copy of the report of the board of railway commissioners for Canada in an investigation which it pursued under the title of *Dawson Board of Trade v. W. P. & Y. Ry. Co.*, 9 Can. Ry. Cas., 190, is filed in the record. That board there holds that it has no control over the rates of the steamboat company from White Horse to Dawson, and that it has no jurisdiction of the charges from Puget Sound points to Skagway, or of the wharfage or bunker tolls at Skagway.

As has been seen, the steamship line from White Horse to Dawson is the property of an independent and foreign corporation, and the transportation conducted by it is wholly outside the United States. If the board of railway commissioners for Canada has no jurisdiction of that company and its charges, how could it be said that we have such jurisdiction? The line of railway from Skagway to White Horse is continuous and operated as such, but, as has been seen, it is owned by three separate corporations, one of which owns only that part which lies in the Territory of Alaska, and the other two of which are in Canadian territory and under the jurisdiction of Canadian laws and the Canadian board. The Commission has no extra-territorial jurisdiction or powers and it is not seen how we can assume to order or compel the British Columbia-Yukon Company or the British-Yukon Railway Company to join in through routes and joint rates with complainant or other carriers under our jurisdiction, or to regulate the charges of said companies.

Since carriers in the Territory of Alaska have been brought under the terms of our act and within our jurisdiction, defendant Pacific & Arctic Railway & Navigation Company has, as stated, filed its separately established charges applicable on through shipments and included therein the wharfage charges at Skagway. It is, of course, bound to assess, collect, and retain neither more nor less nor different compensation than the charges so published from any shipper. Complainant has the same right as any other carrier to use those

rates in making up rates upon through shipments. It is accorded the same privileges and treatment with regard to through shipments and through passengers that are accorded to other steamship lines reaching Skagway, and it does not seem to us that an order requiring a continuance of the present nondiscriminatory practices is or ought to be necessary. If occasion for such an order should arise, complainant may bring the matter to our attention with request for entry of proper and necessary order, and the case will be held open for that purpose.

No. 4657.

EVENS & HOWARD FIRE BRICK COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

No. 4657 (Sub-No. 1).

SAME

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

No. 4776.

LACLEDE-CHRISTY CLAY PRODUCTS COMPANY

v.

ABILENE & SOUTHERN RAILWAY COMPANY ET AL.

Submitted October 21, 1912. Decided November 11, 1912.

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1. On complaint alleging unjust discrimination arising from the fact that higher rates are charged from St. Louis to Texas on fire brick than on pressed or face brick: *Held*, That, following *Stowe-Fuller Co. v. P. R. R. Co.*, 12 I. C. C., 215, and *Metropolitan Paving Brick Co. v. A. A. R. R. Co.*, 17 I. C. C., 197, paving, pressed, face, and fire brick should take the same rate.
 2. The rate of 27 cents per 100 pounds on fire brick from St. Louis to Texas common points is not shown to be unreasonable. Reparation denied.
 3. The present relationship of rates on brick from St. Louis and Versailles, Mo., to Texas shall be maintained.
- 25 I. C. C.

Arthur B. Hayes for Evens & Howard Fire Brick Company.

H. P. Belt for Laclede-Christy Clay Products Company.

Martin L. Clardy, Henry G. Herbel, B. M. Flippin, and C. O. P. Rausch for Missouri Pacific Railway and St. Louis, Iron Mountain & Southern Railway companies.

Henry G. Herbel and E. L. Sargent for Texas & Pacific Railway Company.

Henry G. Herbel and H. Booth for International & Great Northern Railway Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway; Chicago, Rock Island & Gulf Railway; and Trinity & Brazos Valley Railway companies.

Hawkins & Franklin, M. L. Bell, and Wallace T. Hughes for El Paso & Southwestern Railway Company.

Fred H. Wood and Edward Haid for St. Louis & San Francisco Railroad; St. Louis, Brownsville & Mexico Railway; Beaumont, Sour Lake & Western Railway; Fort Worth & Rio Grande Railway; St. Louis, San Francisco & Texas Railway; and Orange & Northwestern Railroad companies.

C. S. Burg and J. W. Allen for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

S. H. West and Edward A. Haid for St. Louis Southwestern Railway Company and St. Louis Southwestern Railway Company of Texas.

H. G. Wilson and W. D. Wells, jr., for Versailles Fire Brick & Clay Manufacturing Company of Versailles, Mo., interveners.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The issues in these cases are identical. They were heard at the same place, on the same date, and have in part been briefed together. They will therefore be considered in one report.

Defendants' rates on fire brick and fire clay from St. Louis, Mo., to Texas common points, to Rio Grande River crossings, and to Mexico are alleged to be unreasonable and to subject complainants and their traffic to undue prejudice and disadvantage to the extent that such rates exceed those contemporaneously in effect from and to the same points on common, paving, and ornamental brick. Reasonable rates for the future and reparation are asked.

Rates herein are stated in cents per 100 pounds.

The items containing the rates in question are in Agent Leland's tariff, I. C. C. No. 677, and are as follows:

Item 125. Brick, common, paving, porous, pressed, or ornamental, straight or mixed carloads, minimum weight marked capacity of car, but not less than

40,000 pounds, 20 cents to Texas common points, and 25 cents to Rio Grande crossings.

Item 126. Brick, brick-tile, clay retorts (not including pall-shaped clay furnaces), enameled brick, fire brick, fire clay, fire-clay flue linings, fire-clay chimney-pipe pots and tops, fire-clay tank blocks, flue linings, hollow brick, hollow building tile or fireproofing, radial brick, radial chimney brick, roofing tile, stack tile, wall coping, straight or mixed carloads, or mixed with common, paving, porous, pressed, or ornamental brick, minimum weight 40,000 pounds, 27 cents to Texas common points, and 32 cents to Rio Grande crossings.

The testimony of complainants was directed to the proposition that, leaving out of consideration the common red building brick, which, on account of local competition in Texas, does not move from St. Louis to Texas, other articles covered by item 125, on which rates of 20 and 25 cents, respectively, to Texas common points and Rio Grande crossings apply are of greater value than fire brick and that, considering size, weight, bulk, risk, method of loading and transportation, volume of traffic, and all other elements on which rates are based, fire brick are entitled to the same or lower rates than such articles.

Fire brick of the kind shipped by complainants are valued at \$16 per 1,000, or \$4.78 per ton. At a rate of 27 cents the freight per 1,000 is \$5.40. A number of the shipments embraced in the complaints were of fire clay, which is a milled commodity less valuable than the manufactured product. Ornamental brick are worth as much as \$50 to \$85 per 1,000, while pressed brick vary in price from \$16 to \$25 per 1,000. The testimony was not conclusive as to the manner in which fire brick are loaded. One complainant's traffic manager testified that they are placed loosely in the car with straw spread between the layers. A building-brick manufacturer doubted whether fire brick are ever laid in straw. He stated that pressed brick are carefully laid in straw and some special kinds are packed in barrels. No special equipment is required for the transportation of brick.

Complainants introduced as exhibits samples of pressed, face, and building brick manufactured by a brick company of St. Louis, the prices of which run from \$16 to \$18.50 per 1,000, and which are shipped at the lower rates. A fire brick, complainants' No. 1, was introduced in evidence. Special stress was laid upon the alleged similarity of this to a pressed brick manufactured by the Hydraulic-Press Brick Company. The dimensions of the pressed brick are $8\frac{1}{2}$ by 4 by $2\frac{1}{2}$ inches; those of the fire brick are $8\frac{1}{2}$ by $4\frac{1}{2}$ by $2\frac{3}{8}$ inches. The fire brick weighs 1 pound more than the pressed brick. Over 95 per cent of the fire brick shipped to Texas by complainants are No. 1. One witness testified that the two bricks could be distinguished by anyone familiar with brick, but not by an ordinary observer. Another witness stated that a person who understood the character of the two kinds of brick could differentiate them. Com-

plainants contend that because fire brick are larger and heavier than pressed brick not so many can be transported in a car. There is from 12 to 15 per cent more material in the fire brick than in the pressed brick.

The carload minimum on brick, common, etc., is the marked capacity of the car, but not less than 40,000 pounds; on fire brick it is 40,000 pounds. There appears to be no question of the ability of complainants and other manufacturers of brick to load much in excess of the minimum, some shipments to Mexico weighing as much as 110,000 pounds.

Paving brick is sometimes used for boiler settings, and to that extent competes with fire brick, but complainants consider that fire brick would be more satisfactory. Fire brick is desired for its heat-resisting qualities and has a rougher surface than pressed brick. Generally manufacturers of fire brick do not manufacture pressed brick; nor do pressed-brick manufacturers make fire brick. Fire brick of varying colors and appearance are sometimes used for face brick as a matter of taste or choice on the part of the builder.

Complainants ship as far east as the Allegheny Mountains, west to the Pacific coast, south to the Gulf of Mexico, and into the north-western part of Canada. One of them advertises that "the Cheltenham fire-brick clays (from which its fire brick are made) are superior to any other clays found in the United States." Witness for one complainant calculated that if the five or six manufacturers of fire brick at St. Louis ship as much per year as does that complainant there would probably be 1,500 cars transported from St. Louis to Texas common points and beyond. There is, however, no showing that the volume of this traffic is as large as this estimate.

Some question arose as to whether or not any shipments were actually made under the 20-cent rate. It was testified that the Hydraulic-Press Brick Company had shipped pressed brick to Texas common points as follows: One hundred cars in 1910, 45 to 50 cars in 1911, and 35 cars for the first six months in 1912. On the other hand, one witness for complainant, a building-brick manufacturer who had been engaged in the business 53 years, stated that his company had made no shipments to Texas common points in the last 10 years, and therefore is not affected by the rate.

The same clay that is used in the manufacture of complainants' fire brick is also used for the manufacture of pressed brick; some of the clay beds of the Hydraulic-Press Brick Company adjoin the clay beds of one complainant.

The rates on brick are blanketed, covering all Texas common point territory. Beyond, the rates are graded until a maximum of 5

25 I. C. C.

cents above the common point rate is reached at the Rio Grande crossings. The following statement gives a history of the rates:

Year.	Fire brick.	Other brick.	Year.	Fire brick.	Other brick.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
1891..	39	.....	1906....	25	22
1893..	30	30	1908....	27	24
1894..	30	25	1910....	27	20
1902..	25	25			

In recent years the brick industry in Texas has increased largely and fire brick made from Texas clay have become strongly competitive with those manufactured from Cheltenham clay. It is only in instances where resistance to extreme heat is required that St. Louis fire brick takes precedence over the Texas product.

At the outset defendants admit that the grouping under the 20-cent rate is not scientific. Originally there were but two classes of brick, common building brick and fire brick. At that time fire brick were more valuable than building brick and the rates were mainly based on value. Afterwards pressed brick were manufactured. As these were for facing buildings, and compared with rough building brick, a small quantity of them were used, the carriers, on request of the manufacturers, permitted the transportation of mixed carloads of pressed brick and common building brick. As the use of pressed brick became more common the manufacturers desired to ship in carload quantities and the carriers' tariffs were amended, and pressed brick were shipped at the lower rate. Finally pressed brick were manufactured from fire clay, and were shipped at the lower rate.

Under western classification brick take class-E rates. Brick are shipped to Texas under commodity rates. The class-E rate from St. Louis to Texas common points was 39 cents. In August, 1908, it was advanced to 43 cents and a 2-cent advance was made on all kinds of brick. In *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C., 463, we condemned the advance in the class rate and sustained a general advance in the commodity rates from St. Louis to Texas common points.

It is alleged that the common-brick rate from St. Louis was originally reduced because the rates to Texas were: From Fort Smith, Ark., to Paris, Tex., 11 cents; from Fort Smith to Dallas, Denison, Fort Worth, and Sherman, Tex., 12 cents; and from the Kansas gas belt to north Texas common points, 14 cents. That is, in reducing the common-brick rate to 20 cents it was defendants' idea that they would meet the competition from interstate points nearby to Texas and stimulate the movement. Notwithstanding this effort to increase the traffic the Missouri Pacific and Iron Mountain handled in 1912

from St. Louis to all Texas common points, differential territory, and Rio Grande crossings but two cars of paving brick, 35 cars of fire brick, and 1 car of fire clay, and during the 12 months prior to the hearing in July, 1912, the Missouri, Kansas & Texas had not hauled a car of brick other than fire brick.

On the Missouri Pacific-Iron Mountain it is not unusual to carry fire brick at a differential over common brick of from 2 to 10 cents. In handling traffic from St. Louis to Texas this road passes through Missouri, Arkansas, and Louisiana. In Missouri the fire-brick rates are 54 per cent higher than common-brick rates; in Arkansas 100 per cent higher; in Texas 53 per cent higher; and in Louisiana 183 per cent higher.

It is asserted by defendants that as the manufacturer produced new fire-clay products it was desired that they be all included under the same rate, and the same is true of the building-brick manufacturer. For instance, ornamental brick is not shipped in carload quantities, but a few hundred are often included in a car of common brick.

Reference is made to *Atchinson v. St. L., I. M. & S. Ry. Co.*, 22 I. C. C., 131, in which the Commission established rates on fire brick from Perla, Ark., to Ruston, Monroe, Tallulah, and Alexander, La., 12, 7, 7½, and 10, respectively, whereas the rates on common brick were 7, 6, 6, and 7½, respectively.

In *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, *supra*, we found the average distance from St. Louis to Texas common points to be 800 miles. On this distance the 27-cent rate yields 6.75 mills and the 20-cent rate 5 mills per ton-mile.

The rates per ton per mile from various representative fire-brick points in central freight association territory to Texas common points are as follows: Brazil, Ind., 984 miles, 31 cents, per ton-mile 6.3 mills; Hobart, Ind., 1,097 miles, 35 cents, per ton-mile 6.4 mills; Portsmouth, Ohio, 1,247 miles, 35 cents, per ton-mile 6 mills.

In further support of the reasonableness of the 27-cent rate, defendants submitted comparison with rates on other low-grade heavy commodities moving between St. Louis and Texas common points.

Commodity.	Rate.	Minimum weight.	Car earnings.
	<i>Cents.</i>	<i>Pounds.</i>	
Fire brick.....	27	40,000	\$108
Canned goods.....	51	36,000	183
Cement plaster.....	40	40,000	160
Cement.....	35	38,000	133
Chloride of lime.....	63	36,000	226
Glucose.....	49	30,000	147
Iron angles, bars, etc.....	80	36,000	216
Wire and nails.....	56	36,000	201
Paints.....	55	40,000	220
Printing paper.....	80	36,000	216
Wrapping paper.....	55	36,000	231

The reduction from the classification rating in the commodity rates on brick is much greater than that in connection with numerous other commodities covered by the same tariff.

It is admitted by the traffic manager of one complainant that face brick, ornamental brick, etc., manufactured in St. Louis and moving into Texas do not compete with complainant's fire brick. There is competition on fire brick from Versailles, Mexico, and Fulton, Mo., but the serious competition is from Texas.

In *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, *supra*, we took the lines of the Missouri, Kansas & Texas Railway as typical. In the 10 months next following that decision the net income of that system decreased \$1,823,014.68. Attention was directed to flood conditions in the Mississippi Valley necessitating large expenditures for the rehabilitation of the lines. Defendants assert that they are not in a position to have their revenues reduced on any important commodity from St. Louis to Texas because it would affect rates to Mexico, rates to intermediate points in Arkansas and Louisiana, etc.

The present adjustment affords to the building-brick manufacturer a uniform rate for his product either in straight or mixed carloads, and the fire-brick manufacturer a uniform rate for his product in straight or mixed carloads, conforming in this respect to the express desire of both.

Complainants argue that the testimony brings the cases squarely within the line of decisions of the Commission summarized in the following paragraphs:

That paving, pressed or face brick, and fire brick, should take the same rate. That from the transportation standpoint there is no reason for any difference. This is held even on testimony showing fire brick to be much the more valuable.

That "common" brick are not considered in connection with other kinds, being a cheap commodity, produced practically in every community, and only transported, when at all, for short distances.

That these three kinds—fire, paving, and pressed brick—are similar in size, weight, shape, and appearance, can not readily be distinguished, are often used interchangeably, and are often made of the same kind of clay.

Even if not of the same size or shape they should take the same classification and same rate.

That brick is a desirable traffic from every consideration—loading capacity, value, risk, volume of traffic, etc.—and should take a low rate.

That a classification distinction between the three kinds is not scientific, and a difference in rates is founded upon a distinction that has no transportation significance.

It costs no more to transport one than another.

If the carriers have voluntarily established a certain rate on high-priced brick, the same rate is sufficiently high, if not too high, on the lower-priced brick.

Stowe-Fuller Co. v. P. R. R. Co., 12 I. C. C., 215; *Metropolitan Paving Brick Co. v. A. A. R. R. Co.*, 17 I. C. C., 197; *James & Abbot Co. v. B. & M. R. R.*, 25 I. C. C.

17 I. C. C., 278; *Hydraulic Press Brick Co. v. M. & O. R. R. Co.*, 19 I. C. C., 530; and *Atchinson v. St. L., I. M. & S. Ry. Co.*, *supra*.

To sustain the reasonableness of the 27-cent rate defendants direct attention to the following cases:

A rate of 80 cents per ton for a two-line haul of 124 miles is so low that we are not inclined to permit or direct the payment of reparation without knowing more of the circumstances. *American Refractories Co. v. E. J. & E. R. R. Co.*, 15 I. C. C., 480.

In *Metropolitan Paving Brick Co. v. A. A. R. R. Co.*, *supra*, the Commission fixed a Chicago-New York base rate of 21 cents to be applied on fire, building, and paving brick. The distance from Chicago to New York is 863 miles. Considering the density of traffic between Chicago and New York as compared with that between St. Louis and Texas common points, it is argued that 27 cents is not unreasonable.

In *Hydraulic Press Brick Co. v. St. L. & S. F. R. R. Co.*, 13 I. C. C., 342, the Commission found the short-line distance from St. Louis to New Iberia, La., to be 835 miles, the route over which the shipments moved to be 1,208 miles, and established a rate of 30 cents on enameled brick.

Rate on brick of 12 cents for 130 miles was sustained in *James & Abbott Co. v. B. & M. R. R.*, *supra*.

Rate of 18½ cents for 236 miles found reasonable in *Frederick Brick Works v. N. O. Ry. Co.*, 12 I. C. C., 18.

In *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115, a rate of 14½ cents for a distance of 475 miles was found reasonable.

References are also made to *Nebraska Material Co. v. C., B. & Q. R. R. Co.*, 20 I. C. C., 89, where a rate of 12 cents for a distance of 330 miles was held reasonable and to *Danville Brick Co. v. C. & N. W. Ry. Co.*, 20 I. C. C., 239, where the Commission upheld a rate of 9 cents for a haul of 290 miles.

The real question here is the relation of rates as between pressed, face, or building brick and fire brick. Common, porous, and paving brick may, from the meager evidence in respect to them and the small tonnage to Texas from St. Louis, be eliminated. Ornamental brick does not move in carload quantities and is in a class by itself so far as packing, value, and volume of traffic are concerned. Practically no testimony was introduced as to flue linings, retorts, tank blocks, hollow brick, or the other articles covered by item 125.

So far as the reasonableness *per se* of the 27-cent rate is concerned no evidence other than opinion was submitted. This rests primarily on comparison of the 20-cent rate with the 27-cent rate; that is, the inconsistency of a lower rate on pressed or face brick than on fire brick and the unreasonableness of a rate of 27 cents on fire brick and fire clay, which are practically indestructible, when fragile articles such as chimney pots, tiling, retorts, hollow, and ornamental brick take the same or lower rates. Complainants refer to rates from St. Louis to Oklahoma points that are lower per ton-mile than the rates to Texas. There is no showing as to the reasons which led to the establishment of such lower rates. The per-ton-mile earnings yielded by a voluntary rate to one point can not be taken as a definite

or fixed rule by which to measure the reasonableness of a rate to some other point. There is no contention that the lower basis of rates to Oklahoma is unjustly discriminatory against complainants. In fact, they are the ones who are benefited thereby. As has so often been said, the carrier may make a rate lower than it can be required to make.

Defendants feel that they are not foreclosed by the previous decisions of the Commission, cited by complainant, from asserting the reasonableness and justice of the existing adjustment from St. Louis, the relation as between fire brick and face brick at St. Louis being dissimilar from those on which the Commission reached its previous conclusions. They seek to differentiate these cases from the principal brick cases that we have decided, in that in those cases there was almost absolute similarity in face, paving, and fire brick. In these cases, as has been seen, the fire brick is larger, heavier, rougher, and could by various methods be distinguished from the only pressed brick which was put in evidence and which it is said to resemble. In fact the pressed brick which was most nearly akin to the fire brick which was put in evidence, is not, according to the testimony, shipped to Texas common points.

They admit that, value considered, ornamental brick should probably take a higher rate than face brick or fire brick, but traverse the allegation of undue discrimination with the saving statement that if they be wrong it is equally a discrimination against face brick. The discrimination, if any there be, could be removed by establishing higher rates on ornamental brick and the articles of greater value than on fire brick and fire clay, which are included under the same rate.

In our view, complainants' No. 1 brick and the pressed brick marked exhibit No. 10 are distinguishable, from the standpoints of size, weight, color, and finish, and the fact that each manufacturer produces a particular class of brick would enable the carrier's agent to determine the rate applicable.

The essential point, however, is whether or not the fire-brick rate shall be reduced to that applicable on pressed brick. Even though the tariff grouping is clumsy and unjustifiable, is the 27-cent rate unreasonable, unjustly discriminatory, or unduly prejudicial? It seems plain from the testimony that were it not for the lower rate on face brick, etc., complainants would not allege that the 27-cent rate is unreasonable. Face brick competes with fire brick in but a slight degree. Complainants' serious competition is with Texas manufacturers.

The testimony clearly shows that the 20-cent rate was established on account of active competition from Kansas, Arkansas, and Texas, and
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in a spirit of liberality to the St. Louis building-brick manufacturer. Notwithstanding such reduction, the carriers were unable to stimulate the traffic from St. Louis. In *Hydraulic Press Brick Co. v. M. & O. R. R. Co.*, *supra*, the conditions were essentially dissimilar from those here presented. There the 12-cent rate applicable on fire brick had been in effect for nine years, and there was no suggestion that it was compelled by competition. Complainants argue that if the 20-cent rate was compelled by competition, the same is likewise true of the 27-cent rate. A competitive rate is frequently lower than a reasonable rate and lower than one which we could order established.

In *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, *supra*, we found that the advanced commodity rates as a whole were not unreasonable, it being understood that any particular rate or set of rates would still be open to attack upon any of the grounds ordinarily assigned in challenging the reasonableness of rates. The decision in that case does not inhibit the petitioner from bringing the 27-cent rate in issue, but it is persuasive that that rate is not unreasonable.

The lowest rate per ton per mile which the Commission has established upon brick was in *Metropolitan Paving Brick Co. v. A. A. R. R. Co.*, *supra*. The rate per ton per mile for a distance of 863 miles from Chicago to New York is 4.8 mills. Being a basing rate on which rates from producing points are made on a percentage basis, it is doubtful whether any brick moves on this rate from Chicago to New York. The average rate per ton per mile in Group VIII, in which traffic from St. Louis to Texas common points is handled, is 9.71 mills. The average rates per ton per mile on all traffic in Groups II, III, and VI, through which the traffic from New York to Chicago passes, are 6.41, 5.88, and 7.51 mills, respectively. Defendants argue that, judged by the rate from Chicago to New York, the rate from St. Louis to Texas common points might reasonably be the class-E basis of 39 cents. Manifestly, it would be unfair to compare a rate from central freight association territory to western trunk line territory with rates from St. Louis to Texas. The circumstances and conditions of transportation, the density of traffic, and the earnings of the carriers are very dissimilar. A comparison where transportation conditions may so easily be differentiated is not apposite. It would be more reasonable to consider the rates from central freight association territory to Texas in comparison with rates from St. Louis to the same destinations, and, as we have seen, for greater distances from those points the rates per ton per mile vary from 6 to 6.4 mills.

In other cases to which reference has been made the lowest rate per ton per mile upheld or found by the Commission was 6.1 mills. The 27-cent commodity rate represents a deduction from the class

rate of 12 cents, a greater decrease from the classification rating than is applicable on any other commodity contained in the tariff.

Admittedly, fire brick load in excess of the minimum; but, even taking that fact into consideration, the statement previously given shows that the car earnings are less on fire brick than on many of the heavy commodities moving from St. Louis to Texas.

Even though the 20-cent rate was voluntarily established by the carriers, the presumption which attaches to a voluntary rate may be rebutted by other facts and circumstances of greater weight and importance.

As has been indicated, the testimony shows that fire brick competes with fire brick and not with building brick. A witness on behalf of one complainant stated that fire brick and the articles which his company manufactures do not come in competition with building brick, except on hollow building tile shipped as building brick. This witness said that if the rate on common, paving, ornamental, and other brick covered by item 125 was 27 cents he would have no complaint. The traffic manager of the same company, when asked whether he would have any complaint of the fire-brick rate if the pressed and ornamental brick rate was 27 cents, said:

I am not here to have other people's rates advanced at all. I am here simply to bring about an equality and satisfactory rate that the railroad companies should maintain and not make fish of one and fowl of the other.

Fire clay of a grade equal to the Cheltenham is not mined in states other than Ohio, Indiana, Pennsylvania, and New York. Geographically, and on account of higher rates to Texas, the impossibility of competition with St. Louis from those states is manifest. There is no competition worthy of the name between St. Louis building brick and fire brick in Texas. Fire brick of the standard maintained by the St. Louis manufacturer, which is used for withstanding high degrees of temperature, is superior to Texas fire brick, its most serious competitor in the territory in controversy.

The vast territory in which complainants sell their products is persuasive that the fire brick which they manufacture is demanded, irrespective of the rate. Complainant Evans & Howard Fire Brick Company has a manufactory at Athens, Tex., and thus in the sale of fire brick manufactured in Texas competes with itself. The maintenance of a lower rate on face brick has not prevented the movement of fire brick to Texas, and it is alleged by defendants that the only result which would have followed the exaction of the fire-brick rate on face brick would have been to deprive the St. Louis face-brick manufacturers of their Texas market.

Upon the whole record we find, as we found in the *Stowe-Fuller* and *Metropolitan Paving Brick Co. cases, supra*, that paving, pressed,

face, and fire brick should take the same rates. From the record and the considerations touched upon in this report it is our conclusion that the 27-cent rate on fire brick has not been shown to be unreasonable *per se*.

The intervenor manufactures fire brick and fire clay at Versailles, Mo. Rates on brick from that point and from Kansas City, Mo., to Texas common points are the same as from St. Louis. The purpose of the intervention is to have the present parity of rates maintained. Versailles is located on the Missouri Pacific and Rock Island lines, about 121 miles east of Kansas City. The Texas business represents but a small proportion of the total output. The principal territory in which intervenor sells is Kansas, Nebraska, Oklahoma, Arkansas, and Missouri. No attack is made upon the rates and reparation is not asked.

While declining at the hearing to agree to the prayer of the intervenor, defendants failed to present any substantial testimony or argument in opposition thereto. We therefore find that this prayer should be granted, and that in the readjustment the rates from Versailles should be kept in their present relationship to the rates from St. Louis.

So far as reparation is concerned complainant Evens & Howard Fire Brick Company submitted two statements with bills of lading and expense bills attached. The first covered 236 cars sold f. o. b. cars destination, upon which freight charges were paid by the consignees and deducted from the invoices. The second comprises 345 cars, the freight charges on which were paid by consignees. At the time of the hearing complainant was endeavoring to obtain assignments from the purchasers.

It appears that the shipments as to which the Laclede-Christy Company seek reparation were sold f. o. b. St. Louis, and that therefore this complainant neither paid the freight nor has been damaged.

The 27-cent rate not having been shown or found to be unreasonable *per se*, it necessarily follows that reparation may not be granted on that ground. The testimony is conclusive that complainants have not been damaged or prejudiced in the sale of their commodity because of the lower rate on face or building brick. There is nothing in the record which suggests that a single car of fire brick has been prevented from moving on account of the face-brick rate. It is alleged that if the rate is reduced to that applicable on face brick, complainants will be enabled to increase their business. Considering the competition now extant in Texas, this is merely speculative. In view of the foregoing, and following *Mack Manufacturing Co. v. P. C. C. & St. L. Ry Co.*, Unreported Opinion 521, we must decline to award reparation in either of these cases.

We agree with the carriers that the tariff provisions covering the transportation of brick from St. Louis to Texas are clumsy, unscientific, and unjustifiable. A distinction should be made as between common brick and pressed, face, building, and fire brick. Inasmuch as fire clay is shipped in comparatively small quantities with fire brick, it does not appear to be unreasonable that it should have the same rate. Ornamental brick and articles included under item 126, other than fire brick and fire clay, may, we think, be placed in a class by themselves; or, as appears to be the desire of the St. Louis manufacturers, all brick or all brick other than common brick may be included in one item at the same rate.

Defendants will be allowed 60 days within which to bring their tariff provisions into conformity with the views herein expressed. If such action is not taken within that period, the Commission will enter such order as is necessary in the premises. The cases will be held for such further proceedings as may be required.

25 I. C. C.

No. 1252.
FELS & COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY ET AL

Decided November 13, 1912.

Petition by complainant asking that case be reopened for the purpose of receiving further testimony and awarding reparation against the Philadelphia, Baltimore & Washington Railroad Company, and additional reparation against the Baltimore & Ohio Railroad Company, dismissed.

James H. Hayden for complainant.

REPORT OF COMMISSION ON PETITION FOR REHEARING.

LANE, *Commissioner*:

The complainant has filed a petition requesting the Commission to reopen this case, which was reported in 23 I. C. C., 483, for the purpose of receiving additional proof in support of the original, amended, and supplemental petitions, for the purpose of introducing against the Philadelphia, Baltimore & Washington Railroad Company the record in the *Procter & Gamble case*, 9 I. C. C., 440, and for the purpose of again considering an award of reparation against the Philadelphia, Baltimore & Washington Railroad Company under said petitions.

An examination of the petition discloses no reason why the case should be reopened for the taking of further proof. The original petition was filed August 28, 1907. A hearing was held on February 4, 1909, and another on April 21, 1911. It is not suggested that any new evidence has been discovered. The petition quotes from that part of our opinion which states that we could not pass upon the reasonableness of rule 28 without a further hearing. The context, however, made it clear that no such further hearing was proposed in the present case. As stated in the previous opinion, the supplemental petition was filed four years after the original complaint. It puts in issue a classification rule that was not attacked at all in the original complaint so that it proposes an entirely distinct cause of action as a basis for additional reparation. We therefore adhere to our previously expressed view that the reasonableness of rule 28 and reparation under it can not be considered in this proceeding.

In answer to the prayer that the case be reopened for the purpose of introducing against the Philadelphia, Baltimore & Washington Railroad Company the record in the *Procter & Gamble case, supra*, it need merely be stated that that record has already been introduced in this case and has been fully considered in connection with the claim against the Philadelphia, Baltimore & Washington Railroad Company.

The prayer that we again consider awarding reparation against the Philadelphia, Baltimore & Washington Railroad Company in view of the fact that it is so closely identified with the Pennsylvania Railroad Company, which was a defendant in the *Procter & Gamble case, supra*, also relates to a matter which was fully considered at the time of our original report. The Pennsylvania Railroad Company and the Philadelphia, Baltimore & Washington Railroad Company are distinct corporations. While in certain cases the courts have held that where the affairs of two or more corporations are so intermingled as to obscure their separate existence except in name the corporate fiction should be disregarded, we do not believe this to be such a case. The authority of the Commission to issue orders in a proceeding is limited to those defendants that are then before it. If this were construed to mean that an order against a parent company could run against all its subsidiaries, endless confusion would result. It is therefore the practice of the Commission to definitely name each corporation to which its orders are intended to apply, regardless of the intercorporate relations which may exist between the parties to an order. This is well illustrated by the order in the *Procter & Gamble case, supra*, which is herein involved. That order specifically ran against the Pennsylvania Railroad Company and also against the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, although the latter company was a subsidiary to the former. But the order was not directed against the Philadelphia, Baltimore & Washington Railroad Company because it was not a party to that proceeding. We therefore reiterate our view that no reparation can be awarded against the Philadelphia, Baltimore & Washington Railroad Company, because it was not directly or indirectly bound by the order issued in the *Procter & Gamble case*.

An order will be issued denying the petition for a rehearing.

25 I. C. C.

No. 3200.
THEODORE BERNHEIM & COMPANY
v.
OREGON RAILROAD & NAVIGATION COMPANY ET AL.

Submitted November 8, 1910. Decided October 7, 1912.

From the facts of record; *Held*, That a rate of \$1.10 per 100 pounds imposed on a carload of liquid tree spray shipped from Chicago, Ill., to Portland, Oreg., and valued at \$9,716, was not unreasonable nor was it unjustly discriminatory as compared with a rate of 65 cents applicable to liquid sheep dip.

A. J. Parrington for complainant.

A. C. Spencer for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

Theodore Bernheim and Isador Koshland, partners under the name of Theodore Bernheim & Company, by their petition, filed March 25, 1910, allege that a rate of \$1.10 per 100 pounds imposed on a carload of liquid tree spray was excessive and unreasonable to the extent that it exceeded a rate of 65 cents applicable to liquid sheep dip. The shipment moved from Chicago, Ill., on November 12, 1909, consigned by Willm. Cooper & Nephews, to the petitioners at Portland, Oreg., and, according to the complaint, consisted of 560 cases of spray, weight 35,446 pounds, and 4 cases of apterite, weight 280 pounds. No objection is made to the rate applied on the apterite. Reparation in the sum of \$207.78 is asked.

At the hearing the complainants filed in evidence the original bill of lading and receipt for freight charges paid and a certified copy of the invoice covering the shipment. The bill of lading contains the description, "1 car sheep dip—564 cases—shippers loading—value not exceeding 6 cts. per lb.," and gives the weight as 35,726 pounds. After inspection by the delivering carrier the shipment was described as, "1 car, 564 cases, liquid tree spray, insecticide in cans, insect poison, n. o. s., released value not exceed 6 cts. per lb.," and charges of \$440 were collected on basis of a commodity rate of \$1.10 per 100 pounds, minimum 40,000 pounds, applicable to "insect poison, n. o. s." December 6, 1909, this rate was reduced to 85 cents, and as so reduced is now effective.

There was also in force at the time the shipment moved a commodity rate of 65 cents per 100 pounds on liquid sheep dip, carloads,

minimum 30,000 pounds. Neither this rate nor the rate of \$1.10 on insect poison carried with it any restriction as to valuation. No commodity rate was published as specifically applicable to liquid tree spray or to spray of any kind. Western classification then in effect provided class-C rating for "sheep dip: Invoice value not exceeding 6 cents per pound, and so receipted for, min. c. l. wt. 36,000 pounds." The class-C rate was \$1 per 100 pounds. The same classification provided class-A rating for "sheep dip, value not stated or exceeding 6 cents per pound." The class-A rate was \$1.60 per 100 pounds. There was no class rating of insect poison as such.

The complainants contend, and by testimony endeavored to show, that liquid tree spray is so nearly the same in character as liquid sheep dip that the higher rate on the former is not justified and amounts to discrimination. Their principal witness stated that the shipment was billed as sheep dip because there was no rate on spray of any kind. He admitted that such billing included the 4 cases of apterite, an insect poison to which the higher rate of \$1.10 was specifically applicable.

The invoice offered in evidence by the complainants shows that the 364 cases consisted of the following:

To 2,004 one-gallon VI spray, \$3-----	\$6, 012
To 100 five-gallon VI spray, \$14-----	1, 400
To 402 one-gallon VII spray, \$3-----	1, 206
To 354 one-gallon VIII spray, \$3-----	1, 062
To 48 No. 5 apterite, \$0.75-----	36
Total -----	9, 716

As the aggregate weight of the shipment was 35,720 pounds, the value per pound, upon basis of the invoice figures was 27.2 cents, although the bill of lading stated it as "not exceeding 6 cents per pound." The record contains no explanation of this difference of more than 400 per cent between the billed value and the actual value of the commodity shipped. It is admitted by the complainants that the commodity so shipped was tree spray and was not sold for, or to be used as, sheep dip. A circular published by the consignor advertises it for use as an insecticide, the three brands comprising the shipment, V₁, V₂, and V₃, being for trees in dormant state, for summer use, and for leaf-eating insects, respectively. It is clear that the commodity, in any of the three forms named, was not a sheep dip and, in the absence of a specific rate on spray, the rate that lawfully should apply on the shipment was \$1.10 per 100 pounds applicable to insect poison, n. o. s.

The facts of record do not indicate that the commodity is entitled to the same rate as liquid sheep dip. Although similar in some respects, the two commodities are different in their chemical prop-

erties. While both are manufactured by the consignor of the shipment in question, they are advertised and placed on the market for separate and distinct uses. This manufacturer advertises liquid sheep dip for sale at \$1.75 per one-gallon can and liquid tree spray at \$3 per one-gallon can. Value has long been one of the established measures of a rate.

In the case of *Hardie Manufacturing Co. v. O. R. R. & Nav. Co.*, 24 I. C. C., 545, the Commission found that the insect poison rate of 85 cents per 100 pounds applied on a carload of 60 barrels of lime-sulphur solution shipped from Pullman Junction, Ill., to Portland, Oreg., was unreasonable to the extent that it exceeded the rate of 65 cents on sheep dip. In its report the Commission said:

Having been recognized and approved as a sheep dip as well as an orchard spray, if the shipment had been billed as "liquid sheep dip" instead of "lime-sulphur solution," the inspector could have changed the billing only upon knowledge of the use to which the commodity was to be put. The Commission has consistently condemned the maintenance of different rates upon the same commodity dependent upon the use thereof, and in this case it is held that the same rate should apply on "lime-sulphur solution, inv. val. not exceeding 6 cents per pound," as on "liquid sheep dip, inv. val. not exceeding 6 cents per pound," and on the same minimum basis of 30,000 pounds. The invoice value of the shipment in question was considerably less than 6 cents per pound.

In fact, the record showed that the carload was valued at only \$450, or about $1\frac{1}{2}$ cents per pound. In the case now before us, the commodity shipped possessed a value of over 24 times as great as the preparation in the *Hardie case*, *supra*.

The charge collected on the shipment involved in this complaint was in accordance with the published rate in effect at the time of movement. While this rate was reduced from \$1.10 to 85 cents within one month after the date of shipment such voluntary reduction is not, of itself, sufficient proof of the unreasonableness of the \$1.10 rate during the period of its effectiveness, as has been held many times by this Commission. Under the circumstances existing at the time of shipment, we can not find the rate to have been excessive. The complaint therefore will be dismissed.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 168.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF POTATOES AND OTHER PERISHABLE FREIGHT IN HEATER CARS BETWEEN POINTS IN TRUNK LINE TERRITORY AND CANADA.

No. 5244.

BOSTON POTATO RECEIVERS' ASSOCIATION

v.

BANGOR & AROOSTOOK RAILROAD COMPANY ET AL.

Submitted November 11, 1912. Decided November 12, 1912.

The proposed heater tariffs under suspension found to be just and reasonable and should be allowed to take effect when the reconsignment provisions therein have been modified in accordance with the views expressed in this report, and subject to the limitation that no charge should be made for the use of a heater car unless ordered by the shipper, or unless the fires are lighted.

Brandeis, Dunbar & Nutter and *J. J. Kaplan* for Boston Potato Receivers' Association.

G. S. Hobbs and *S. M. Carter* for Maine Central Railroad Company.

E. J. Rich for Boston & Maine Railroad.

P. R. Todd and *G. E. Wicks* for Bangor & Aroostook Railroad Company.

W. B. Bamford for Canadian Pacific Railway Company.

E. G. Buckland for Boston & Maine Railroad and New York, New Haven & Hartford Railroad Company.

S. S. Perry for New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

The tariffs under suspension advance the heater charges established by the defendant carriers in connection with the transportation of perishable fruits and vegetables from points in Maine to various points in New England, New York, New Jersey, and Pennsylvania. The commodity mainly involved is potatoes, but apples and perhaps some other fruits and vegetables move to some extent under these charges. The only testimony introduced upon the hearing referred to the transportation of potatoes.

About 28,000 carloads of potatoes annually originate in Aroostook county, Me., and that immediate vicinity, and this production is constantly increasing. Of these, some 20,000 carloads originate upon the Bangor & Aroostook, 5,000 carloads upon the Maine Central, and 3,000 carloads upon the Canadian Pacific. As a rule the initial movement of these potatoes is toward the east, and so to Portland, Boston, southern New England, New York, and Philadelphia. There is a limited initial movement toward the west, for New York, and points west and south.

During the greater portion of the year potatoes from this territory are shipped in ordinary box cars, sometimes in sacks and sometimes in bulk. For a certain part of the year, which was said to be the entire month of April and all or a part of the month of November, they require some protection against frost, but sufficient protection is afforded by the use of ordinary refrigerator cars, which prevent the entrance of the cold into the car but do not involve the use of artificial heat. It was conceded that for at least four months in the winter—December, January, February, and March—artificial heat must in some form be employed.

Two methods of applying artificial heat are at present in use.

An ordinary box car is lined with boards and paper and furnished with a stove in which a fire can be kept. This was the method first employed, and this method is still used to a very considerable extent. When employed, the car is usually lined and equipped by the shipper, who furnishes the fuel and the man necessary to tend the fires and look after the car. Under the present tariffs the railroad company supplies the ordinary box car, carries the attendant free upon the going trip, and returns him to point of origin in its passenger trains at 1 cent per mile for the distance traveled.

The second method is by the use of what is known as a heater car. While several cars of this kind have been constructed in an experimental way, and while at least one other kind of heater car has been put into actual service, the only car of that type now in use for the shipment of these potatoes is what is known as the Eastman car.

This car is provided with insulated walls, much like the ordinary refrigerator car. It is perhaps somewhat less substantial in construction and somewhat less efficient in preventing the ingress of cold than the modern refrigerator car, but it accomplishes substantially the same purpose.

Underneath the car is placed the heater, which is, in effect, a combination of several kerosene burners, consuming in the production of heat ordinary kerosene oil. The heat from this heater is distributed to different parts of the car by means of passages in the walls and bottom of the car itself.

In the actual operation of this car it is necessary that some person should examine the burners at stated intervals for the purpose of ascertaining whether they are properly lighted and replenish the tank when necessary. The heater must also be cleaned and otherwise kept in order at the end of each trip, all of which renders it necessary to employ at different points men to discharge these duties and also to maintain supply houses where the needed materials are kept in store.

There seems to be some trouble with the Eastman car, arising from the fact that the burners sometimes go out, and it was also said that in extremely cold weather it was difficult to obtain sufficient heat from this form of heater to warm the car before the potatoes were placed in it; but on the whole it appeared that shippers were equally well satisfied with either the lined car or the heater car.

At the present time 1,360 Eastman cars are in service. Of these 860 were originally built and owned by the Eastman Car Company, but some three years ago 400 of these cars were sold to the Canadian Pacific Railway Company, by which they are now owned. Some two years ago the Maine Central Railroad ordered on its own account 500 of these cars, which were constructed by other parties under the direction of the Eastman Company.

All these cars are at the present time operated under contract with the Eastman Car Company, which assumes entire charge of the heating apparatus during the journey of the car and makes good all damages arising from improper warming of the car. The carrier, however, publishes the charge itself. These charges in the past have been, in case of potatoes, named by the bushel, being, for example, 2½ cents per bushel to Boston and other New England points and 3 cents per bushel to New York. Rates for other perishable commodities have been named in cents per 100 pounds, being substantially equivalent, pound for pound, to those on potatoes. The proposed rates now under suspension are in all cases named by the 100 pounds, and run from 4 cents to Boston and similar territory to 7 cents to Philadelphia, minimum from \$12 to \$21. They work an advance to Boston of approximately one-half cent per bushel and to New York of slightly more. The only question presented in No. 168 is upon the inherent reasonableness of these charges.

In order to properly understand that question and avoid any misapprehension for the future it is perhaps necessary to notice a phase of this matter which is not in these proceedings directly before the Commission.

It has already been noted that artificial heat is provided sometimes by permitting the shipper to line the car and furnish the heat himself and sometimes by supplying a heater car. In the former case the shipper does not line the car for each trip, but is furnished with a car at the opening of the season, which is his car for that entire

season. This, it will be seen, makes that car the private car of the shipper, and the testimony was that these cars were in all cases returned to the shipper who had lined them.

While it is necessary that the shipper should send an attendant with the lined car for the purpose of keeping up the fire, the tariffs of the carriers permit one attendant to take charge of not exceeding six cars. It will be seen, therefore, that this item of expense depends upon the number of cars which can be sent in charge of a single individual. The shipper who is in position to send six cars to the same destination, or who can combine with some other shipper or shippers so that the services of a single attendant may be available for that number of cars, obtains a very important advantage over the shipper who has for shipment but a single car.

The cost of lining the car at the beginning of the season is a fixed charge which, in determining the cost of a particular trip, must be divided by the number of trips. It appears that these cars to some destinations and under some circumstances can be returned much more quickly than in others, so that particular shippers would obtain their cars at a less expense than other shippers, owing to the fact that the car itself made a greater number of trips.

These potatoes are handled in two ways. Certain dealers have erected receiving sheds in the potato-producing territory and buy potatoes at a price delivered by the producer into these sheds. They thus become the property of the dealer, who stores them in his sheds until in the course of business he desires to make shipment to the consuming market.

Many potatoes are shipped by the producer to some commission man in Boston or elsewhere for sale on commission. The testimony indicates that about 75 per cent of these potatoes are purchased from the grower outright, while 25 per cent are handled on commission. It further appeared that the dealers who bought these potatoes outright were comparatively few in number, who dealt in very large quantities.

It is evident that the large dealer, with his storage sheds, is in much better position to use the lined car than the small shipper shipping a carload at a time and then only occasionally and to different markets. It appeared in testimony that the shippers themselves were not at all agreed as to whether the lined-car system or the heater-car system was the best. Generally speaking, the large shipper preferred the lined car, while the small shipper insisted upon the heater car.

As already said, there is no question of discrimination in this case, but this subject has been in various connections called to the attention of the Commission in the past. The claim that the existence of these two systems results in discrimination has been made, and inevitably will be made.

No opinion is expressed at this time as to whether there rests upon carriers in general the duty of supplying protection against cold by the use of artificial heat. It has come to be universally admitted that carriers do in many cases rest under obligation to protect shipments against heat by producing artificial cold, and there is apparently no distinction in principle. Probably each case would rest upon its own facts. However that may be, we are clear that in this case, taking into account the great volume of this traffic, the fact that artificial heat must be supplied in such extensive measure and that the carriers themselves have for years undertaken to furnish this heat, these defendants with respect to this potato traffic at least are under obligation to provide some method by which this commodity can be protected from the cold during the winter months. If that is so, we think it must follow that the carriers in the discharge of that duty may select any proper type of equipment and may insist upon the exclusive use of that equipment in so far as heat is provided by the use of special devices, but in doing this they must not impose unreasonable charges for that service.

The carriers have elected, in so far as they undertake to afford protection by means of artificial heat, to use the heater car, and this, having reference to the necessities of the transportation, is a suitable kind of equipment. Whether any discrimination arises out of the fact that certain shippers are permitted to furnish their own heat is referred to to prevent misapprehension, but not decided. Only the reasonableness of the heater charges is before us.

For the major part of the year potatoes from those points of origin are shipped in ordinary box cars, but during certain months this heater car must be used. Now, it is just to the users of the heater car to require for this additional and extraordinary service additional compensation proportionate to the service performed. It would not be just to the shippers of potatoes who do not require this additional service if the railroad rendered it for nothing. We proceed to inquire, therefore, what additional expense to the carrier is involved in providing the Eastman heater car.

First, a car of special construction is required. It appeared that the cost of building an Eastman car complete at the present time is approximately \$500 per car more than that of an ordinary box car of the same size, but that the capacity of the Eastman car is 55,000 pounds, as compared with 60,000 pounds in the box car.

Second, the Eastman car weighs about 44,000 pounds, as compared with 36,000 pounds in case of the box car. Here, therefore, is an additional weight of 8,000 pounds which must be transported in both directions.

Third, it was much insisted upon by the carriers that the Eastman car, as a practical matter, was only available for the transportation of

these potatoes and could not be used to any great extent for any other service. They conceded that general merchandise and many kinds of freight could be carried in these cars, but said that under practical conditions they were not used to any considerable extent during the summer months, nor for any purpose except the movement of these perishables requiring protection against the cold. The testimony fairly establishes that, especially in case of the Bangor & Aroostook, which has but little inbound merchandise traffic, Eastman cars must stand idle during a large portion of the summer.

Fourth, there is the expense of operation; that is, of supplying the oil, tending the fires, cleaning and repairing the heater equipment itself.

Fifth, these heater charges virtually guarantee against damage by frost, and it appeared that considerable sums were annually paid by the railways on this account.

The proposed charges are 4 cents per 100 pounds in case of shipments to Boston and similar points, running up as high as 7 cents upon shipments to Philadelphia. No heater cars are operated south of Philadelphia. The minimum for potatoes is 36,000 pounds, so that these charges yield upon the basis of the minimum, which is seldom much exceeded, from \$14.40 for a haul of approximately 400 miles, requiring on the average perhaps three days, up to \$25.20 for a haul of 700 miles, with an average running time of six or seven days. Upon this general statement of the matter these amounts would hardly seem to be in excess of the additional cost of the service provided the Eastman car is used.

The carriers introduced certain figures tending to show the actual cost of performing this service. There are to-day in existence, as already stated, 1,360 of these cars, all of which were in service during the shipping season of 1911; that is, the season beginning in the fall of that year and terminating in the spring or summer of 1912. The attempt was made to show the actual results from the operation of these cars during that season.

The receipts from these heater charges are exactly known, and there is therefore no doubt as to that side of the account.

Upon the other side, the carriers attempted to show the additional cost of inspecting and maintaining the 1,360 heater cars over the cost of inspecting and maintaining the same number of box cars of the same size. This item is necessarily an estimate, and was based upon the assumption that the cost of these cars was \$628,500 more than that of ordinary box cars, and that 8 per cent on this sum would be a reasonable allowance for the maintenance and inspection of this part of the equipment.

As already stated, the cars are all operated by the Eastman Car Company, which keeps an account of the expense of operation, so that this item can be exactly given.

It will be remembered that the payment of the heater charge insures the property against frost, and certain damages on this account are paid by the carrier every year. There was also an item of insurance, which is understood to cover the depots and plants of the Eastman Car Company, which are used in the operation of these cars.

The account stated upon this basis would be as follows:

EARNINGS.	
Gross receipts.....	\$108, 630. 89
EXPENSES.	
Cost of maintenance and inspection.....	18, 855. 00
Operating expenses.....	69, 211. 30
Damage claims.....	9, 668. 19
Insurance.....	865. 27
Total.....	98, 599. 76
Net earnings.....	10, 031. 13

It is unnecessary to say that the above net earnings are no just return upon the value of these 1,360 cars.

This method of computation is not accurate. The use of the car itself is disregarded altogether. The Eastman Car Company, for example, is paid by the Maine Central and the Boston & Maine companies 1 cent per mile in both directions for the use of its car and, strictly speaking, the income from this source must be considered along with the income from heater service in determining whether the operation is a profitable one.

It was urged, however, by the carriers that in the above computation it was assumed that the mileage for the use of the car would exactly offset the cost of furnishing the ordinary box car. It was further suggested that the computation itself took no account of the fact that the box car which was involved in the construction of the heater car was out of service for a considerable portion of the year, and that whenever the heater charges were applied an additional weight of 8,000 pounds must be hauled.

The experience of the Armour car lines in the operation of heater cars is somewhat instructive.

It appears that many experiments have been made for the purpose of determining in what way this artificial heat can be furnished to the best advantage and that, among others, the Armour car lines have given this matter considerable attention and have brought out a line of heater cars of their own. In these cars alcohol is used as fuel.

The company made extensive experiments for the purpose of perfecting the car and finally obtained one which was workable and which was put into service under contract with the Bangor & Aroostook during the year 1911. The service to the shipper, after some preliminary difficulties, was made reasonably satisfactory, but at the end of the season the Armour car lines declined to renew its contract with the Bangor & Aroostook upon the ground that it was unprofitable and has withdrawn entirely from the business.

The experience of the Eastman Company itself indicates that the profits from this service are not extravagant. That company began operations about 1873. It never paid any considerable dividends, and several years ago was reorganized upon the basis of a loss of what had been originally invested in the concern. It is not to-day, apparently, a profitable venture.

It seems plain that if the Eastman car is to be used for the furnishing of this protection the heater charges imposed by these suspended tariffs are not unreasonable.

The protestants insist that even though this may be so, nevertheless the advances ought not to be permitted for the reason that the Eastman car is an extravagant appliance which the railroads have no right to force upon shippers. They urge that the same results can be obtained from the lined car and that it is the business of the carriers to line up the necessary cars and operate them themselves instead of using the Eastman car. If they elect to use the heater car, then the charge must be no more than the same service could be furnished for with the lined car.

The assumption at the bottom of this claim of the protestants would seem to be reasonable. If these defendants, by doing themselves what shippers have for years done, can furnish the necessary protection at a less figure than by the use of the Eastman car, then we agree that carriers should not be permitted to use this wasteful and extravagant appliance at the expense of the shipper. If they use it, their rates should be made to conform with what the service would reasonably cost if performed in the other method, which has always been perfectly obvious to the railroads and which was first in use. We next inquire, therefore, whether these charges are extravagant as indicated by the cost of the lined car.

The expense of putting in a temporary lining lasting for a single season is about \$40. If this lining is removed at the end of the season, there seems to be very little salvage except the stove, which is good for the next year. The testimony shows that during the season of 1912 Eastman cars occupied on the average 37 days for a trip. If lined cars consumed the same length of time, each car would make on the average about four trips during the season, and the cost of lining the car alone would be substantially \$10 a trip.

It appeared that a permanent lining could be put into these cars at from \$70 to \$80, and the representative of the Canadian Pacific testified that his company had so equipped 200 cars. It declined to equip any more itself, or to permit any more to be permanently equipped by its shippers, for the reason that the cars could not be put into general service while the linings were in. The inference seems to be that if the railroad were to furnish these lined cars it would do it for the most part by putting in at the beginning of each season a temporary lining.

The lining weighs about 5,000 pounds upon the average, and therefore adds somewhat less to the weight of the box car than does the providing of the Eastman car.

It is necessary to send with the car an attendant and to provide necessary fuel. It did not appear what the fair cost of the fuel used upon the average trip was, nor did it appear what the cost of the attendant per day might be. It is evident that with respect to cars moving to a destination point like Boston it would generally be possible to put several cars in charge of one attendant, but in case of shipments to other points it would often happen that but a single car of potatoes would be carried in a particular train, and this would frequently necessitate the use of an attendant to accompany the car to destination. This item of cost therefore would vary greatly according to the destination point.

One firm showed that for the year 1911 the cost of furnishing this protection by lined cars did not much exceed 1 cent per bushel; but this firm was a large shipper whose shipments went almost entirely to Boston and which had been able to secure a service of two trips per month from its cars. It seems to us extremely doubtful whether the cost of rendering this service to all destinations would, on the average, be less with the lined car than with the Eastman car. Certainly the carriers had before them the option of adopting a heater car or a lined car, and chose the heater car. It is not easy to understand why the Maine Central should have purchased 500 of these heater cars and should have ordered another 500, which are about to be delivered, unless it believed that it could furnish this service to its shippers in a more acceptable manner and at as low a cost as by lining box cars already in its possession.

If the movement of these potatoes was altogether in large quantities to Portland and Boston, beyond peradventure the use of the lined car would be cheaper than the Eastman car. Upon the other hand, where shipments are more generally distributed, the Eastman car furnishes both the cheapest and the most satisfactory method. Probably the needed protection can be obtained at the least cost by exactly the method now employed, which is the use of lined cars by the

largest shippers to the principal markets of destination and the use of the Eastman car, in other instances. Evidently, if the use of the Eastman car were exclusive, the profitableness from the operation of that car would be very much increased, since the average trip would be shorter and the cost of operation less.

If either the lined car or the Eastman car were to be exclusively adopted it seems probable that the expense of the two would not much differ. Upon a view of the entire situation we do not feel that the charges proposed by the tariffs under suspension would impose upon shippers requiring this service of protection an unreasonable burden.

The tariffs of the carriers provide that from November 1 to November 15 and from March 31 to April 30 Eastman cars may be used without the fire for a flat rate of \$5 per car, irrespective of destination. Between November 15 and March 31 the heater charges must be paid whether the fires are lighted or not. The protestants say that they should not be compelled to pay these heater charges from November 15 to December 1 unless the fires are actually lighted.

It fairly appears that from November 1 to December 1 the necessity for protection may occur, although a considerable part of that time ordinary box cars can be used. It further appears that between November 15 and December 1 a refrigerator car will ordinarily afford the needed protection, but that there are seasons when artificial heat is needed even then. It seems to us, therefore, that the carriers must be prepared to furnish in some form the necessary protection.

All these carriers have what is termed a refrigerator tariff; that is to say, at any time between October 1 and May 1 a shipper desiring to use a refrigerator car but not requiring artificial heat may order such refrigerator car upon the payment of \$5 per car to all destinations. The reasonableness of this tariff is not drawn in question. If, therefore, between November 1 and December 1 a shipper desires a refrigerator car, he need not order an Eastman car, but can simply place his order for a refrigerator car and can obtain a refrigerator car at the tariff rate.

We have already seen that in order to operate these heater cars it is necessary that an organization should be maintained with men and supplies at various points. This being so, there would seem to be nothing unreasonable in requiring the payment of these heater charges whenever a heater car is actually ordered by the shipper and used. There is therefore no hardship in permitting the carriers to maintain the present tariffs under which heater charges will be assessed after November 15, whenever a heater car is ordered. If the shipper does not desire to use the heater car, he need not order it and will not then be required to pay these charges.

It was said that owing to conditions at shipping points shippers were in fact obliged to use Eastman cars before weather conditions required their use.

As already said, there is but little inbound merchandise or other inward freight upon the Bangor & Aroostook Railroad. That railroad begins to move in and park cars for the shipment of potatoes as the beginning of the season approaches. There is great difference in the early movement in different seasons. Sometimes 1,000 cars, and in other years three times that number, may move out during the month of September. It frequently happens therefore that the supply of available box cars is exhausted before the necessity for using Eastman cars arises, but the heater cars are already on hand and the shipper in order to obtain the prompt shipment of his product orders and uses an Eastman car.

It is the duty of the carrier to furnish necessary equipment for the movement of this traffic, and it is of course liable for any unlawful failure to perform that duty. If a carrier, not having a box car, furnishes one of these Eastman cars for its own convenience, the use of the box car ordered should be protected, but if a shipper himself for any reason sees fit to order one of these Eastman cars then we think he must pay the tariff rate. We do not undertake at this time to lay down any definite rule as to the circumstances under which a heater car should be furnished in lieu of a box car which has been ordered but is not available. The only way by which discrimination could be avoided would seem to be to fix some definite period after which the heater car should be supplied at the box-car rate.

The complainants in No. 5244 attack the reasonableness of the present heater charges in case of reconsigned shipments.

It appears that these potatoes are frequently shipped to Boston, where they are reconsigned to some other destination. The reconsigning charge is \$2 per car, which is the same whether the car is moving under heat or not. Fifty per cent is added to the regular heater charge in case of reconsigned shipments under heat. The claim of the complainants is that the car should go through to destination upon whatever heater charge would have applied from point of origin to final destination, as though there had been no reconsignment.

In that view we can not altogether concur. The cost of rendering this service is more where the car goes to Boston and is there reconsigned than it would be if it went directly through from point of origin to final destination. Not only is there an additional day at least in Boston, but the time occupied by that route may be longer, and the task of watching the shipment is certainly increased.

In our opinion the proper method is not, however, by adding 50 per cent of the heater charges, but by imposing a reconsigning charge to

cover the additional heater expense. Assuming that \$2 is a proper reconsigning charge when no heater service is involved, we are of the opinion that \$4 would be a proper reconsigning charge when the car was moving under heat, and that in addition \$1 per day may be charged for heater service during the entire period that the car is held for reconsignment.

The complaint further alleges that additional reconsignment charges are made in case of lined cars. No justification for this was offered by the carriers. No additional expense is cast upon them, and there is no apparent reason why lined cars should not be reconsigned upon the same terms as ordinary box cars not lined. In our opinion the tariffs of the carriers are unjust and unreasonable in this particular and should be amended.

Our general conclusion is that the proposed heater tariffs under suspension will be just and reasonable and should be allowed to take effect, when the reconsignment provisions have been modified in accordance with the views above expressed and subject to the limitation that no charge shall be made for the use of a heater car unless ordered by the shipper or unless the fires are lighted.

In this connection it seems proper to say that if carriers should elect to treat the Eastman car as a refrigerator car and to furnish it upon an order for a refrigerator car, it might be proper to charge for the use of the car so ordered the refrigerator rate.

During the season of 1911 the tariffs of the carriers provided that where Eastman cars were used during the month of October, as well as for the first half of November, a charge would be made. In No. 5244 the complainant attacks the reasonableness of this provision and asks reparation by way of refund of charges collected under it.

The opinion has already been expressed that no charge should be made for the use of Eastman cars during this period unless such cars are ordered by the shipper. The testimony shows that heater cars would not be ordered during this period. We are therefore of the opinion that such charges as were paid by members of the complaining association between October 1 and November 15 on this account should be refunded, unless the carrier affirmatively shows that the car was ordered by the shipper.

The complainant has filed detailed statements giving the amount of such charges paid by its members, but no testimony was introduced upon this point at the time of the hearing. If these lists upon being checked over by the carriers are found correct, orders will be entered in accordance with them; if not, for such amounts as may be found due.

An order will now be issued as to the tariffs under suspension.

25 I. C. C.

No. 3370.
BEEKMAN LUMBER COMPANY
v.
LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL

Submitted July 1, 1912. Decided November 12, 1912.

Shipment of lumber from Whitford, La., to Oelwein, Iowa, was misrouted by the initial carrier. Reparation awarded.

G. H. Lowry for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainant, a corporation with offices at Kansas City, Mo., is engaged in the purchase and sale of lumber. An informal complaint, filed March 16, 1908, was superseded by formal petition, filed June 29, 1910, which alleges that the defendants misrouted a car of yellow-pine lumber shipped on August 11, 1906, from Whitford, La., to Maywood, Ill. The shipment was delivered to the Louisiana Railway & Navigation Company at Whitford, consigned to the Beekman Lumber Company, Maywood, Ill., with instructions to "route via L. R. & N. to Shreveport, care K. C. S. to Kansas City, care C. G. W." The rate over this route was 23 cents to Kansas City plus 10 cents beyond, amounting to 33 cents. The initial carrier, contrary to the routing shown in the bill of lading, forwarded the car from Shreveport via the St. Louis Southwestern Railway to Cairo, Ill., whence it moved to Chicago by the Illinois Central Railroad and from Chicago to destination via the Chicago Great Western Railroad. The rate applicable via this route was 16 cents from point of origin to Cairo, plus 10 cents from Cairo to destination, making a through rate of 26 cents, or 7 cents less than the through rate via the route directed by the consignor. On August 16, 1906, the consignee filed written instructions with the agent of the Chicago Great Western Railway Company at Kansas City to reconsign the car to the Chicago Great Western Railway, care of H. C. Chandler, Oelwein, Iowa. Before the car could be located and moved from Maywood to Oelwein demurrage to the amount of \$13 accrued at Maywood.

The complainant alleges that the lumber was sold to the Chicago Great Western Railway for its own use at Oelwein, that its contract was for Kansas City delivery—the lumber to be hauled over that carrier's rails from Kansas City to destination. It contends that under this arrangement it would have had to pay only the rate of 23 cents for the movement to Kansas City, and seeks reparation in the amount of the difference between the rate of 23 cents and the rate of 26 cents actually charged, plus the aforesaid demurrage charge of \$13. These allegations are borne out by complainant's Exhibit No. 1, which is an original order to it from the purchasing agent of the Chicago Great Western Railway Company, dated July 25, 1906, calling for certain lumber at prices f. o. b. Kansas City, to be consigned to the Chicago Great Western Railway Company, care of H. C. Chandler, Oelwein, Iowa.

The initial carrier admits that it disregarded the routing instructions, but denies responsibility, saying it had no legal rate from Whitford to Kansas City or by way of that junction to the named destination; and it avers that the only available route from Whitford to Maywood was the one used. The tariffs filed with the Commission do not support this contention. Kansas City Southern tariff, I. C. C. No. 1509, effective April 1, 1904, to which the initial carrier is properly shown as a party, names a joint rate of 23 cents per 100 pounds on lumber from Atlanta and Winnfield, La., to Kansas City, Whitford being intermediate. This rate is applicable via Shreveport and Kansas City Southern Railway. While there is no specific rate named from Whitford to Kansas City, the tariff does not prohibit the application of rates to intermediate points, and it is a matter of common knowledge that such application was made generally by carriers at the date of this shipment. In Special Circular No. 6 the Commission referred to the practice of carriers in applying tariff rates as maxima at intermediate stations, except when tariffs specifically provided to the contrary, and stated—

that until July 1, 1908, carriers may continue the use and present application of tariffs which were issued prior to January 15, 1908, and which contain rules of the character hereinbefore referred to, or under which, without specific provision in the tariff therefor, the rates or fares have been applied at intermediate stations.

We think it is clear from the facts before us in this proceeding that the route named by the consignor was available, and that it was the duty of the initial carrier to forward the shipment in accordance therewith. The complainant was entitled to reconsign the car at Kansas City, and was deprived of this right by the action of the carrier. Had the shipment moved as directed, such reconsignment would have been effected, and according to the record the charge

which the complainant would have been obliged to pay would have been \$146.28, based upon a weight of 63,600 pounds, and a rate of 23 cents per 100 pounds from Whitford to Kansas City; the purchasing carrier having agreed to pay the balance of the rate to destination. Our opinion is that the shipment was misrouted by the initial carrier, the Louisiana Railway & Navigation Company, and that the complainant was damaged thereby in the sum of \$38.08, which is the difference between the charges actually imposed, \$184.36, which includes the demurrage charge of \$13, and the aforesaid charge of \$146.28. An award of reparation with interest from November 7, 1906, will be entered against this defendant.

25 L. C. C.

No. 4264.

M. W. THOMPSON

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted September 15, 1912. Decided October 7, 1912.

Charges assessed for the transportation of apples in carloads from Espanola, N. Mex., to various points in Arizona and California were, in the absence of joint through rates, based on the sums of the intermediate rates, which were subject to varying minima; *Held*, That the charges were, in each instance, unjust and unreasonable to the extent they exceeded the charges that would have accrued under a joint through rate of 80 cents, subject to a carload minimum of 30,000 pounds, which rate is prescribed for the future. Reparation awarded.

F. A. Jones for complainant.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company and Santa Fe, Prescott & Phoenix Railway Company.

Eugene Fox and *W. A. Hawkins* for El Paso & Southwestern system.

E. W. Olapp and *H. O. Hallmark* for Southern Pacific Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is engaged at Espanola, N. Mex., in the growing and shipping of apples. By petition, filed June 20, 1911, he alleges that he has been subjected by defendants to the payment of unjust and unreasonable rates for the transportation of apples from Espanola to various points in Arizona and California, and to the exaction of excessive demurrage charges on the same. It is further alleged that the defendants discriminate against complainant by reason of their failure to extend certain desired diversion and stoppage-in-transit privileges to the traffic in question. Reparation and the establishment of reasonable joint through rates for the future are sought.

Espanola is a local station situated on a branch narrow-gauge line of the Denver & Rio Grande Railroad 33 miles north of Santa Fe, N. Mex., the junction point between the latter line and the Atchison, Topeka & Santa Fe Railway. The product of the orchards in and about Espanola move in part to markets in Arizona, such as Holbrook, Flagstaff, Winslow, Phoenix, and Prescott, also to Needles,

Cal. Traffic to such points moves via Santa Fe, and lading must be transferred at that point from narrow to broad gauge equipment.

On October 27 and 28, 1910, complainant delivered to the Denver & Rio Grande Railroad Company at Espanola 3,190 boxes of apples for shipment to various points in Arizona; he was in each instance the consignee, and it is important to note that on each shipment a through bill of lading was issued by the originating carrier. Some of the shipments were reshipped from the first point of destination. The details of the shipments, stops, diversions, freight, and demurrage charges assessed thereon, out of which the claim for reparation grows, are as follows:

On October 28, 1910, one carload of 588 boxes of apples, weighing 29,400 pounds, moved via Denver & Rio Grande Railroad to Santa Fe, thence Atchison, Topeka & Santa Fe Railway to Prescott, Ariz. Charges to the destination named were assessed in the sum of \$330.75 based on a rate of 15 cents per 100 pounds, Espanola to Santa Fe, plus 97½ cents, Santa Fe to Prescott, in addition to which demurrage charges in the sum of \$35 were collected for detention at Prescott. The car was partly unloaded at Prescott and on December 21, 1910, the remainder, consisting of 320 boxes, was reshipped in the same car to Phoenix; for the latter transportation charges in the sum of \$67.20 were assessed based on a rate of 28 cents, minimum weight 24,000, to which was added \$2 for demurrage.

October 27, 1910, 588 boxes, weighing 29,400 pounds, moved via Denver & Rio Grande Railroad and Santa Fe Railway to Winslow, Ariz. Freight charges in the total sum of \$270.26 and demurrage charges in the sum of \$31 were collected at Winslow, the freight charges being assessed upon the following basis:

Espanola to Santa Fe.....	29,400 pounds, at 15 cents.....	\$44.10
Santa Fe to Albuquerque.....	30,000 pounds, at 20 cents.....	60.00
Albuquerque to Winslow.....	28,400 pounds, at 40 cents.....	113.16
	Total.....	\$217.26

January 3, 1911, the car without transfer of contents was reshipped under new bill of lading from Winslow to Phoenix, where charges in the total sum of \$193.72 were assessed based upon a combination freight rate of 58 cents applied to a weight of 28,400 pounds, amounting to \$164.72. After the \$31 demurrage had been paid at Winslow, a further charge of \$18 accrued which followed the shipment to Phoenix and was there collected, together with an additional \$11 accruing at the latter place.

October 27, 1910, two lots, one of 499 boxes, weighing 24,950 pounds, and one of 132 boxes, weighing 6,600 pounds. A separate bill of lading, consigning same to complainant at Holbrook, Ariz.,

25 I. C. C.

was issued for each lot, but as evidence of the fact that the two lots were considered as but one shipment, delivered at the same time, the two bills of lading each bore reference to the other lot. The lots moved in separate cars from Espanola to Santa Fe, but were there consolidated in one car and moved as one shipment from Santa Fe to Holbrook where charges in the total sum of \$275.11 were assessed, based as follows:

Espanola to Santa Fe	24,950 pounds, at 15 cents	\$37.43	
	6,600 pounds, at 25½ cents (l. c. l. rate)	16.83	
Santa Fe to Holbrook	31,550 pounds, at 70 cents		\$54.26
	Total		220.85
			275.11

October 28, 1910, two lots; one of 518 boxes, weighing 25,900 pounds, and another of 156 boxes, weighing 7,800 pounds. A separate bill of lading, consigning same to complainant at Flagstaff, Ariz., was issued for each lot, but as evidence of the fact that the two lots were considered as but one shipment, the respective bills of lading each bore reference to the other lot. The lots moved in separate cars to Santa Fe, but were there consolidated in one car and moved as one shipment from Santa Fe to Flagstaff, where charges in the sum of \$326.89 were assessed, based as follows:

Espanola to Santa Fe	25,900 pounds, at 15 cents	\$38.85	
	7,800 pounds, at 25½ cents (l. c. l. rate)	19.89	
Santa Fe to Flagstaff	33,700 pounds, at 33 cents		\$58.74
	Total		276.34
			326.08

Subsequently the defendants corrected the basis of the charges from Espanola to Santa Fe by applying the carload rate of 15 cents upon the 7,800-pound lot, and refunded to the complainant \$8.19. On December 1, 1910, the car without transfer of lading was re-shipped to Needles, Cal., under a new bill of lading providing for stop-off at Kingman, Ariz. At the latter place, part of the shipment was unloaded and the car then sent on to Needles where charges for the transportation from Flagstaff to Needles were collected in the sum of \$136.43 based on a rate of 39 cents upon a weight of 33,700 pounds, plus \$5 charge for stop-off.

October 28, 1910, two lots; one of 509 boxes, weighing 25,450 pounds; another of 200 boxes, weighing 10,000 pounds. A separate bill of lading, consigning the property to complainant at Phoenix, was issued for each lot, but as evidence that the two lots were considered as but one shipment, the respective bills of lading each bore reference to the other lot. The two lots moved in separate cars to Santa Fe, where they were consolidated and sent forward to Phoenix in one car. Charges were originally assessed in the sum of \$487.31;

subsequently the carriers refunded on the shipment on account of overcharge \$56.72, leaving the net charges collected and retained \$430.59, based as follows:

Espanola to Santa Fe.....	509 boxes, 25,450 pounds, at 15 cents.....	\$38.18	
	200 boxes, 10,000 pounds, at 25½ cents (l. c. l. rate)	25.50	
			\$63.68
Santa Fe to Peoria, Ariz.....	709 boxes, 35,450 pounds, at 97½ cents.....		345.64
Peoria to Phoenix.....	709 boxes, 35,450 pounds, at 6 cents.....		21.27
	Total.....		430.59

The complainant states that defendants were in several cases unable to quote or ascertain the rates applicable to the movement of the shipments and contends that the intermediate rates with their varying minima resulted in excessive and unreasonable charges, in comparison with the through rates and resulting charge which would accrue on similar shipments from Colorado common points, from which points joint through rates with fixed and uniform minima apply to the respective points of destination and to California points as well. The petition cites a tariff issued by Agent Countiss and also an exception sheet published by the Pacific Freight Bureau, which schedules apply on classes and commodities from points in Colorado to the respective points of destination here involved and to California points. He uses class-C rate of 70 cents, minimum weight 24,000 pounds, as a basis for asserting that 70 cents would have been a reasonable rate for the service here in question. However, the tariff is not governed by the exception sheet referred to in connection therewith, but by the western classification instead, which rates apples in carloads at fifth class. The fifth-class rate from Colorado points to the points of destination here involved is \$1.12, subject to a minimum of 24,000 pounds, which basis would result in higher charges than were actually paid.

The minima prescribed in the tariffs of defendants upon the movement of apples in this section of the country do vary considerably. We find, for instance, rates named upon minima of 16,000, 20,000, 24,000, 25,000, and up to 30,000 pounds; but it would appear that some of the lower minima are prescribed in connection with relatively high local rates. It is evident from the record that the narrow-gauge equipment of the Denver & Rio Grande Railroad will readily load to the 24,000-pound minimum, and that no difficulty is experienced in loading the standard-gauge equipment with 30,000 pounds or more.

The demurrage charges are alleged to be excessive and to result in part from the inability of defendants to promptly ascertain and apply the proper freight rate. However, it would seem that complainant went in person to most of the points of destination for the purpose of selling the apples, and failing to find a good market left

the apples in the car until he could dispose of them or reship them to some other place for final disposition. Thus the carriers' equipment was really used for storage purposes. We can not find that the demurrage charge of \$1 per day was, under these circumstances, excessive or unreasonable.

Since this complaint was filed the defendants have published and now maintain a joint commodity rate of 80 cents, minimum weight 30,000 pounds, applicable to the destinations in question from all points of shipment designated in the tariff as taking Group J rates. This group includes about 629 points of origin in Colorado, 222 in New Mexico, and 17 in Wyoming. Among the Colorado shipping points named we find the rate applicable from Monarch, Colo. The record does not disclose whether any apples originate at Monarch, but it is a local station on a narrow-gauge branch of the Denver & Rio Grande Railroad, and that carrier is a party to the tariff. It would appear that shipments moving therefrom to points on the Santa Fe in Arizona might move via the narrow-gauge tracks to Santa Fe for transfer to standard gauge. However this may be, it is evident that shipments originating at Monarch would necessarily pass over narrow-gauge rails via part of the route. The tariff in question contains a rule (No. 5) which provides:

When necessary to transfer freight from broad to narrow gauge cars, or vice versa, minimum carload weight will be as provided herein for standard-gauge cars, regardless of the number of narrow-gauge cars that may be necessary to transport the shipment.

The facts of record, as above stated, show that the Denver & Rio Grande Railroad in three instances charged the less-than-carload rating on part-lot shipments from Espanola to Santa Fe, a distance of 33 miles, and that in each instance the entire shipment was consolidated at Santa Fe and loaded into standard-gauge equipment in which it was transported to ultimate destination. It is true that separate bills of lading were issued for the car lot and part-car lot haul over the narrow-gauge haul of the Denver & Rio Grande, but whether this was required by the carrier or was due to misapprehension of the shipper, is not disclosed. The complainant testified, however, that he was told by the agent at Espanola that he could load one car to its full capacity and if the minimum were not reached he could put the balance in another car regardless of the number of boxes.

Complainant estimates that, barring accident, the apple crop at Espanola will make about 100 cars this year, of which his proportion would be 20 to 40 cars. We think complainant and other shippers at Espanola are entitled to joint through rates and an established basis of rates and minima from which the transportation charge to any probable point of shipment can be readily ascertained.

Upon consideration of the whole record we are of opinion, and find, that the charges complained of were unjust and unreasonable to the extent they exceeded the charges which would have accrued upon basis of a rate of 80 cents from Espanola to the respective points of destination, applied to a minimum of 30,000 pounds, which rate and minimum will be prescribed for the future, subject to a requirement of the character stated in rule 5, quoted above. We further find that complainant made the shipments as recited in the foregoing statement of fact; that he paid charges thereon in the several sums stated; that said charges were unreasonable; that he has been damaged to the extent of the difference between the amounts so paid and the amounts which he would have paid upon basis of the rate and minimum herein found reasonable; and that he is, therefore, entitled to an award of reparation in the sum of \$348 with interest from December 20, 1910. An order will be entered accordingly.

25 I. C. C.

No. 4307.
HUTCHINSON MILL COMPANY
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

No. 4307 (Sub-No. 1).
MONARCH MILL COMPANY
v.
SAME.

No. 4307 (Sub-No. 2).
WILLIAM KELLY MILLING COMPANY
v.
SAME.

No. 4307 (Sub-No. 3).
O'NEIL-KAUFMAN-PETTIT GRAIN COMPANY
v.
SAME.

Submitted May 16, 1912. Decided November 11, 1912.

Tariffs of the Santa Fe system not found to have provided for the absorption of switching charges at Hutchinson, Kans., on traffic milled in transit at that point. Complaints dismissed.

A. E. Helm for complainants.

J. L. Coleman and J. R. Koontz for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are engaged in the milling business at Hutchinson, Kans. By petitions, filed June 13, 1911, they allege that on various interstate shipments of grain milled in transit at Hutchinson the collection of certain switching charges was unlawful in that it was violative of the terms of defendant's tariffs. Reparation in the sum of \$2,870 is asked on shipments which moved between June 1, 1909, and June 1, 1911.

Complainants' mills are located on the tracks of the Chicago, Rock Island & Pacific and Missouri Pacific roads, and on traffic moving via the line of the Santa Fe system, milled in transit at Hutchinson, it is necessary that cars be switched by the above lines from and to the Santa Fe tracks, for which service the charge is \$2 per car for the movement in each direction. Complainants contend that defendant's tariffs provided for the absorption of these charges, and the only point here in issue is the interpretation of the tariffs.

Prior to January 10, 1910, Santa Fe system circular 2047-C, I. C. C., No. 4174, authorizing transit privileges at various points, including Hutchinson, provided as follows:

When shipments of grain, etc., are placed in an elevator, warehouse, or other place of storage at transit points not reached by the tracks of the Santa Fe line, the expense incurred in moving such shipments from and returning same to the Santa Fe system shall be borne by the owner or shipper.

It is therefore clear that prior to the above date no authority existed for the absorption of these charges.

Effective January 10, 1910, the above provision was changed to read as follows:

When shipments of grain and other articles mentioned in circular are placed in an elevator, warehouse, or other place of storage at transit points not reached by the tracks of the Santa Fe system, the expense incurred in moving such shipments from and returning same to Santa Fe line shall be borne by the owner or shipper, except when otherwise provided in Santa Fe system tariff 7641-A, I. C. C. No. 3924, supplements thereto or reissues thereof.

Santa Fe system tariff, I. C. C. No. 3924, referred to above was entitled "*Switching charges on carload traffic from and to industries at points on lines named,*" and contained a provision as follows:

HUTCHINSON, KANS.

Foreign-line switching charges will be absorbed on all local as well as competitive carload traffic at Hutchinson, Kans.

Although this rule appears to be unlimited in its application when considered by itself, the general character of the tariff in which it is found must be taken into consideration. The title of this tariff indicates that the provisions contained therein are applicable to *traffic from and to industries at points named*. The milling in transit at Hutchinson was merely an incident to the through transportation to final destination; the shipments had their origin at various stations on the line of the Santa Fe system, and in fact were not shipments from or to industries at Hutchinson. This same tariff, I. C. C. 3924, contained several items which specifically provided for the absorption of switching charges at certain transit points, and it is evident that these are the exceptions referred to in the item shown

above as effective January 10, 1910. Furthermore, supplement No. 6 to this tariff, effective December 2, 1907, and in force during the life of the tariff, provided as follows:

Switching at transit points on grain, grain products, etc.—For rules governing, except as provided for herein, see Santa Fe system circular 2047-C, I. C. C. 4174, supplements thereto or reissues thereof.

This item makes it more clear that the tariff should not be used as authority for the absorption of switching at transit points, except where specifically provided. Subsequent tariffs in effect during the movement in question made no material change.

The petitions of complainants do not allege that they have been misled to their detriment or in any wise damaged, and the proceeding seems to have been instituted merely for the purpose of securing an interpretation by this Commission of the provisions of defendant's tariffs. While the various provisions when taken alone may give rise to some ambiguity and uncertainty, we are unable to find, upon consideration of the whole situation, that defendant's tariffs provided for the absorption of the switching charges involved. The complaints will therefore be dismissed. An order will be entered accordingly.

25 I. C. C.

No. 4711.
ST. LOUIS BLAST FURNACE COMPANY
v.
VIRGINIAN RAILWAY COMPANY ET AL.

No. 4711 (Sub-No. 1).
SAME
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted June 27, 1912. Decided November 12, 1912.

By stipulation of the parties these cases, involving rates on coke from Page and Eagle, W. Va., to Carondelet, Mo., were submitted upon the records in *St. Louis Blast Furnace Co. v. V. Ry. Co.*, 24 I. C. C., 360; *Held*, That such records do not show these rates to have been unreasonable or unjustly discriminatory or otherwise in violation of the act to regulate commerce. Complaints dismissed.

Harold R. Small and Stewart, Bryan & Williams for complainant.
W. S. Bronson for Chesapeake & Ohio Railway Company.
J. B. Nessel for New York Central lines.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The allegations set forth in the complaints in these cases are substantially the same as in the cases of *St. Louis Blast Furnace Co. v. V. Ry. Co.*, 24 I. C. C., 360, except as to the matter of reparation, and at the hearing it was agreed by counsel that they be submitted on the records in the latter cases.

The complaint in No. 4711, which was filed February 23, 1912, alleges the shipment of 236 carloads of coke, in December, 1909, and May, June, and July, 1910, from Page, W. Va., to St. Louis, Mo., and that the rate of \$2.90 per ton collected thereon was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of \$2.23 per ton. Reparation is demanded in the sum of \$4,232.39. Most of these shipments moved via the Virginian Railway from Page to Deepwater, the Chesapeake & Ohio Railway from Deepwater to Cincinnati, the Cleveland, Cincinnati, Chicago & St. Louis Railway from Cincinnati to East St. Louis, and the St. Louis, Iron Mountain & Southern Railway to Carondelet, Mo. A few of the cars moved by

way of Louisville, Ky., instead of Cincinnati, but over the lines above named.

The petition in No. 4711 (Sub-No. 1), filed February 23, 1912, alleges the shipment of 16 carloads of coke in February, 1910, from Eagle, W. Va., to St. Louis, Mo., upon which the defendants charged a rate of \$2.80 per net ton. This rate is alleged to have been unreasonable and unjustly discriminatory to the extent that it exceeded \$2.23 per net ton, and reparation is demanded in the sum of \$227.69. These shipments moved via the Chesapeake & Ohio Railway from Eagle to Cincinnati, the Baltimore & Ohio Southwestern Railroad to East St. Louis, and the St. Louis, Iron Mountain & Southern Railway to Carondelet. While the petitions refer to St. Louis as the destination, the cars as a matter of fact were delivered to complainant's plant at Carondelet, which is a point taking the St. Louis rate.

In *St. Louis Blast Furnace Co. v. V. Ry. Co.*, *supra*, the Commission was of the opinion that the charges imposed upon complainant's shipments of coke from Page and Ansted, W. Va., and Glassport, Pa., to Carondelet were neither unreasonable *per se* nor unjustly discriminatory and that they did not subject complainant to undue prejudice or disadvantage. We did find, however, that the rates collected on the shipments from Page to Carondelet that moved via New Albany, Ind., were in excess of the rate lawfully applicable thereto, but there is no evidence that such is the case with respect to the shipments here in question. There is nothing in the records in the prior cases that shows the rates now under consideration to have been unreasonable or unjustly discriminatory or otherwise in violation of the act to regulate commerce, and it follows therefore that these complaints should be dismissed.

25 I. C. C.

No. 4074.

IN THE MATTER OF THE INVESTIGATION OF ALLEGED
UNREASONABLE RATES AND PRACTICES INVOLVED
IN THE TRANSPORTATION OF WOOL, HIDES, AND
PELTS FROM VARIOUS WESTERN POINTS OF ORIGIN
TO EASTERN DESTINATIONS.

No. 2634.

RAILROAD COMMISSION OF OREGON
v.
OREGON RAILROAD & NAVIGATION COMPANY ET AL.

No. 3939.

NATIONAL WOOL GROWERS' ASSOCIATION
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted November 6, 1912. Decided November 12, 1912.

1. The minimum of 24,000 pounds for cars 36 feet in length, prescribed by the Commission for the transportation of wool in the original report herein, imposes upon the shipper no unreasonable burden and increases the car efficiency and the economy of transportation; but if cars less than 36 feet in length are tendered for shipment, they should be covered by a proper tariff provision.
2. Contention of shippers that the Commission should apply the rates established for baled wool in all instances where the loading of sack wool equals or exceeds the minimum prescribed for baled wool, not sustained.
3. Rates on scoured wool from Albuquerque, N. Mex., to the east found excessive. They should be reduced by as much per 100 pounds as the reduction in the rates on wool in the grease suggested by the Commission in the original report.
4. Former decision that wool in the territory covered by the investigation should take the fourth-class rate, with a minimum of 24,000 pounds, adhered to.

J. T. Marchand for Interstate Commerce Commission.

V. O. Johnson and *P. S. Haddock* for National Wool Growers' Association.

C. B. Aitchison for Railroad Commission of Oregon.

W. J. Anderson for St. Louis Wool Trade and *B. Harris* Wool Company.

25 I. C. C.

P. W. Coyle for Business Men's League of St. Louis.

J. F. Ehninger for H. T. Thompson & Company and others.

H. A. Scandrett for Union Pacific Railroad Company, Southern Pacific Company, and others.

J. D. Armstrong for Great Northern Railway Company, Northern Pacific Railway Company, and others.

E. N. Clark and *J. D. McMurry* for Denver & Rio Grande Railroad Company.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

A. P. Matthew for Western Pacific Railway Company.

R. B. Scott and *C. E. Spens* for Chicago, Burlington & Quincy Railroad Company.

E. Fox for Chicago, Rock Island & Pacific Railway Company and El Paso & Southwestern system.

F. A. Jones for Arizona Corporation Commission.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Chairman:

The Commission, by its report of March 21, 1912, in the above cases, 23 I. C. C., 151, found certain rates and regulations applied to the transportation of wool in the grease from western territory to eastern markets to be unreasonable and recommended the substitution therefor of certain other rates and regulations. No formal order was made in that proceeding, but the carriers have voluntarily complied with most of the suggestions contained in the report. Numerous protests have been received, both from shippers and from carriers, to the effect that certain suggestions and requirements were unreasonable, and asking that the conclusions of the Commission be modified in these respects. The character and volume of these protests were such that it seemed best to further consider the questions raised, and the case was therefore assigned for further hearing upon certain specified points. Such hearing has been had, and the matters are now before us for disposition. The points to which the supplemental hearing was directed and the conclusions of the Commission with respect to those questions are as follows:

1. Immediately upon the publication of the opinion of the Commission numerous letters and telegrams were received from shippers stating that the minimum prescribed by the Commission could not be loaded. The old minimum had usually been 20,000 pounds for cars of all sizes, while the new minimum suggested by the Commission for wool in the grease was 24,000 pounds for cars 36 feet in length, with a corresponding increase for larger cars. It was strenuously insisted that cars would not contain this minimum.

25 I. C. C.

The new rates and minima were generally made effective about June 1, 1912. At the supplemental hearing all the principal wool-carrying roads filed statements showing the loading of all cars of wool originating upon their lines subsequent to May 1, 1912. These statements show that in practically every instance the cars were loaded to at least the prescribed minimum. The rule of the carriers provides that where a smaller car is ordered and a larger car furnished for the convenience of the carrier, the minimum applicable to the smaller car will be protected, and there were some instances of cars 40 feet and over in length which contained less than the minimum applicable to that car, but which were furnished under an order for a 36-foot car. There were also a few cars where the shipper did not have a sufficient amount of wool with which to load the car, but in practically every case where the shipper did have wool enough to fill the car the prescribed minimum was loaded.

The testimony showed, however, that in certain localities a small quantity of wool of peculiar kind is produced which is not as heavy as the ordinary run of wool in the grease and which can not, therefore, be loaded to the minimum prescribed by the Commission. This wool seems to be clipped early in the season and had for the most part moved previous to May 1, when the records furnished by the carriers begin. While the actual loading for the year 1912, as furnished by the carriers, would indicate to the contrary, it seems probable that there are cases where the minimum of 24,000 pounds can not be loaded, but these cases are the unusual exception.

In fixing the new and reduced rate the Commission had in mind the increased minimum. If that minimum were to be reduced it would be only just to the carriers to correspondingly increase the rate. Should we therefore reduce the minimum to accommodate the few cars of light wool which probably do exist, the result would be to impose upon the great bulk of this commodity an additional charge. Even now the light wool at the heavier minimum and the lower rate pays a less transportation charge than it would at the former minimum and the former rate.

The actual results of our finding have been to increase the loading and therefore decrease the cost of transportation without practical inconvenience to shippers. Thus the Union Pacific Railroad in 1912 handled 65,774,059 pounds in 2,115 cars, as compared for the season of 1911 with 62,420,521 pounds in 2,280 cars, showing an increase in the total amount handled and a decrease in the number of cars.

We are satisfied that the minimum suggested by the Commission imposes upon the shipper no unreasonable burden and increases the car efficiency and the economy of transportation and that it ought not to be disturbed.

25 I. C. C.

The minimum prescribed by the Commission was for certain cars 36 feet in length and larger. The tariffs of the railroads apply this minimum to all cars up to and including those 36 feet in length, with an increase for larger cars. It appeared that in some few instances cars less than 36 feet in length had been furnished, and it was said that the 24,000 pounds could not always be loaded into this smaller equipment.

The decision of the Commission contemplated that the minimum should vary with the size of the car. Plainly, if it increases with the length, it ought also to decrease with the length. Tariffs of carriers should therefore be modified so as to begin with a car 36 feet in length or to provide a lower minimum for a shorter car. It was stated by the carriers that these short cars were almost obsolete and that they did not desire to embrace them in their tariffs so as to be obliged to furnish a shorter car upon notice. If they do not desire to tender these short cars for the shipment of wool in any case, they need not embrace them in the tariff; but if cars less than 36 feet in length are to be tendered for shipment, they should be covered by a proper tariff provision.

2. The Commission by its opinion established a minimum of 24,000 pounds for a car 36 feet in length for wool in the grease. For baled wool it named a lower rate than for wool in the grease, with a minimum of 32,000 pounds for a car 36 feet in length. It further provided that the rate on baled wool should only apply on wool compressed to a density of at least 19 pounds to the cubic foot.

The shippers show that it is possible with some kinds of wool to produce a density of nearly 19 pounds to the cubic foot in sacks, and that in a substantial percentage of all cars the loading of sacked wool was equal to the minimum prescribed for baled wool. They further show that it is not practicable to bale a very considerable part of the wool affected by these rates. They urge that we should apply the rates established for baled wool to all instances where the loading of sacked wool equals or exceeds the minimum prescribed for baled wool.

The argument by which this request is supported is that it is a matter of indifference to the carrier whether the heavier loading be secured by the baling or the sacking of the wool. If the car actually contains the required loading, whether the wool be baled or sacked, then the carrier may properly be required to transport it at the lower rate.

This argument overlooks the fact that no commodity is loaded always to its exact minimum. It usually happens that the actual loading very considerably exceeds the minimum prescribed. What has been already said indicates that in case of wool it would be impossible to prescribe a minimum which would just fit every car, since

the weight of the wool varies considerably, sack for sack. The same thing is to a degree true of baled wool. A minimum of 24,000 pounds for sacked wool means that the average loading will considerably exceed 24,000 pounds, and a minimum of 32,000 pounds for baled wool of the density required also means that baled wool will be upon the average loaded much beyond that figure. This appears from the statements of actual loading for the past season, introduced by the carriers. If, therefore, we were to apply the baled-wool rate to sacked wool, loading to the minimum prescribed for baled wool, the effect would be to materially reduce the revenues of the carriers.

Such a rule would also introduce a graded minimum, and while we do not say that there may not be and are not many instances where a clear distinction can be drawn between the higher minimum with the lower rate and the lower minimum with the higher rate, still this provision is an extremely unusual one and is strenuously objected to by the carriers in this case. It is evident that if some scheme were applied by which the rate properly decreased in proportion as the loading increased justice would be done both between different shippers and between shippers as a class and the carriers. It is possible that some system of this kind will finally be applied to commodities where the weight, when the car is filled to its physical capacity, varies as much as in the case of this commodity; but these rates were constructed upon the other theory, and we are not satisfied that they impose any substantial hardship. To apply this principle without materially reducing the revenue of the carriers would require an entire reconstruction of the rates themselves, and we shall, therefore, leave them as they are for the present.

It was said that it would be impossible to determine accurately the density to which wool was compressed, owing to the bulging, and therefore the somewhat irregular shape of the package when taken from the compress, but this is true to a degree of cotton and of other articles which are compressed and it is not believed that any serious difficulty can result from that source.

3. Complaints were received from two or three scouring mills in New Mexico to the effect that the change in rates would put those plants out of business.

Wool loses about two-thirds in weight by scouring; that is, by removing the dirt contained in wool in the grease. Ordinarily wool is scoured at the factory or near the factory, but with a view to avoiding the cost of transporting the dirt from the far western point, where the wool is produced, to the eastern point of consumption a few scouring mills have been erected in the west. One of these represented upon the hearing was located at Albuquerque, N. Mex., and

another, from which complaint had been received, at Las Vegas, N. Mex.

The mill at Albuquerque draws its wool in the grease from points in Arizona and New Mexico and pays into the mill a local rate, which was said to be satisfactory. The rate on scoured wool from Albuquerque to Boston has been and is \$3.27 per 100 pounds. The rate on wool in the grease previous to our reduction had been, from Albuquerque, \$1.89 per 100 pounds. The reduced rate prescribed by the Commission was \$1.50 per 100 pounds from Albuquerque, a reduction of 39 cents, and rates on wool in the grease from other territory from which the Albuquerque mill draws its supplies were correspondingly reduced. The result, of course, was that the saving in freight under the new adjustment of the tariffs was reduced by 39 cents per 100 pounds on the scoured wool, and the proprietor of this mill testified that under the influence of these rates his business had been cut in half and that he would not be able to continue the operation of his mill.

Scoured wool can not be sacked as compactly as wool in the grease, since it is not as heavy. The present carload minimum on scoured wool is 10,000 pounds for cars 36 feet in length, with a proportionate increase for larger cars. The proprietor of this Albuquerque mill testified that he could not load 10,000 pounds into the 36-foot car, but could load the minimum into cars 40 feet and over in length. He further said that scoured wool could not be compressed.

The only other mill as to which the Commission received information was located in the northwest, and it appeared that this wool, when scoured, was in fact compressed to the required density for baled wool and shipped under the rate applicable to baled wool in the grease.

We do not feel that we have before us the necessary information from which to arrive at any conclusion as to what should be the fair relation between scoured wool and wool in the grease. We are, however, of the opinion that the rates on scoured wool from Albuquerque are excessive and that they should be reduced by as much per hundred pounds as the reduction in the rates on wool in the grease suggested by the Commission, which was 39 cents. It was said upon the hearing that the reduction in the rate on wool in the grease was greater from Las Vegas than from Albuquerque and that to apply the same rule at Las Vegas would throw out of line these two scouring mills. The evidence is not sufficient to enable us to form a definite opinion upon this point. We can only say that a just relation should be maintained between all these scouring points.

We are not inclined to interfere with the minima now in effect. The witness stated that he could load to the required minimum cars

of 40 feet and over and he can protect himself by ordering cars of that size.

4. The Commission held that wool in the territory covered by its investigation should be classified as fourth class in carloads. To this the carriers strenuously object, urging that even if that classification be applied as to eastbound traffic it ought not to be applied to westbound. The reason for the objection of the defendants is found in the effect upon their water competitive rates.

As appears from the original opinion, water competition between Pacific coast points like Portland and San Francisco, upon the west, and Boston and Philadelphia, upon the east, has produced a rail rate of \$1 per 100 pounds on baled wool. A shipper located at an interior point can therefore send his wool to the Boston market by shipping it to one of the Pacific coast terminals and thence re-shipping it either by rail or by water to the eastern destination. Since the rail rate from the terminal is \$1, plainly the rate from the interior point can not exceed \$1 plus the charge from the interior to the terminal and the cost of baling. The Commission permitted the defendants to disregard the fourth section from the intermediate points of origin, provided their rates to the east from points affected by water competition were constructed by adding the rate to the coast to \$1, for a rate on baled wool from the interior points, and adding to this 25 cents, which is the charge for baling, for the rate on sacked wool. If the rate from the coast to the Atlantic seaboard, which is now \$1, should be changed, of course a corresponding change might be made in rates from interior points.

Under the above holding the rate from the interior point to the coast must determine the rail rate from that interior point to Boston. In the past the carriers have applied from these interior points rates on sacked wool which were in many cases equivalent to the second-class rate and on baled wool rates equivalent to the third-class rate. If, now, they are required to establish fourth-class rates, it will result in a reduction of their transcontinental rates from those points to which the effect of water competition extends.

The Commission recognizes the fact that these lower rates from the more distant points are in effect a discrimination against the intermediate point, which should be in every proper way minimized.

But it finds difficulty in holding that these points should be deprived to any extent of the benefit of their location. It is the right of a shipper of wool to send his commodity on a reasonable rate to the Pacific coast terminal and to ship it from there by water to the eastern market. If he thereby obtains a lower rate than his competitor further east it is due to the advantage of the locality in which he lives. If these defendants are obliged to meet that situation it is a

natural disadvantage, from which they are not entitled to ask relief. In other words, it is the duty of this Commission to prescribe a reasonable westbound rate from the point of origin to the point of destination and to allow competitive conditions to work out the result.

It was also earnestly insisted by the railroad commission for the state of Oregon that woolen mills located in the Willamette Valley draw their supplies of wool to a considerable extent from interior points, since the kind of wool which they could best use is produced there, and it was urged that these industries are entitled to demand a reasonable rate of transportation.

We carefully considered this question before announcing our original conclusion. We have suggested in another case relating to the same general subject the third-class rate for carloads of wool in territory east of the Mississippi River, where the loading is necessarily lighter, with a minimum of 16,000 pounds. *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684. We still feel that the fourth-class rate, with a minimum of 24,000 pounds, is reasonable in the territory covered by our investigation. There may be an intermediate territory between this intermountain country and the Mississippi River where wool can not be loaded as heavy as 24,000 pounds and where that would not be an appropriate carload minimum. We shall not therefore require these defendants to modify their classifications in this respect unless they elect to do so, but we shall require that from and within the territory embraced in our general investigation and our former opinion carriers shall apply to the transportation of wool in carloads, both in bales and in sacks, a rate not higher than the fourth-class rate, with a minimum of 24,000 pounds for cars 36 feet in length and a corresponding increase for larger cars.

Attention was called to several instances in which it was claimed that the carriers had not carried out the suggestions of the opinion, but those relate to individual roads, and need not be referred to here.

25 I. C. C.

No. 4503.
APPALACHIA LUMBER COMPANY ET AL.
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted October 18, 1912. Decided November 12, 1912.

1. Complainants allege that defendants' lumber rates from points on the Cumberland Valley division of the Louisville & Nashville Railroad to certain points in Ohio, Michigan, and Pennsylvania are unreasonable, because the through rates equal the sum of the intermediate rates based on Cincinnati; *Held*, That the mere fact that these through rates are constructed upon the Ohio River does not show them to be unreasonable, and that complainants' contention is therefore not sustained.
2. The claim that defendants make lower lumber rates from points on the Cumberland Valley division to more distant points than to intermediate points north of the Ohio River is not passed on, pending fourth-section applications of interested carriers for relief from the operation of the long-and-short haul clause.
3. No reparation can be awarded up to the time when the Commission passes upon these fourth-section applications, unless, possibly, a case is made out under the third section, which might carry with it an award of damages, or unless under the first section the rate to the intermediate points has been found unreasonable.

H. G. Binns for complainants.

W. A. Colston for Louisville & Nashville Railroad Company.

O. S. Lewis, E. Barton, and M. R. Waite for Baltimore & Ohio Railroad Company; Baltimore & Ohio Southwestern Railroad Company; and Cincinnati, Hamilton & Dayton Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The Cumberland Valley division of the Louisville & Nashville Railroad extends from Corbin, Ky., to Norton, Va., a distance of 118 miles. At Corbin connection is made with the main line of the Louisville & Nashville from Atlanta, Ga., to Cincinnati, Ohio.

The complainants are lumber dealers who ship lumber from points on the Cumberland division, particularly Appalachia, Va., to various points north of the Ohio River via the Louisville & Nashville to Cincinnati and the lines of the various other defendants from Cincinnati. The complaint is twofold.

First, it is alleged that rates from these points of origin to 59 points in Ohio, 8 points in Michigan, and 2 points in Pennsylvania are unreasonable in and of themselves.

There is also a general allegation that rates to all points in Ohio and surrounding territory are excessive.

Second, it is claimed that the defendants make lower rates to more distant points than to intermediate points north of the Ohio River; that they thereby violate the fourth section and unjustly discriminate against the intermediate points, in violation of the third section.

Reparation is prayed for.

UNREASONABLE RATES.

The rates involved are higher when applied to walnut, cherry, and cedar, known as woods of value, than when applied to other lumber, but no question is made in this proceeding as to the propriety of this higher rate and only the rate on ordinary lumber is here referred to.

The rates complained of are in all cases made by combination upon Cincinnati. Treating Appalachia as the point of origin and Cleveland, Ohio, as a typical point of destination, the rate would be constructed as follows:

The local rate from Appalachia to Cincinnati is 13 cents per 100 pounds; from Cincinnati to Cleveland 10 cents per 100 pounds. The through rate, 23 cents per 100 pounds, is produced by adding together these two local rates. All the rates attacked as unreasonable, with a possible exception of one or two, are constructed in this manner.

The only evidence introduced upon the hearing and the only considerations referred to upon the argument to show the unreasonableness of the rates in question arise out of the method by which these rates are constructed. It is argued by the complainant that if 13 cents is a reasonable local charge from Appalachia to Cincinnati, and 10 cents a reasonable local charge from Cincinnati to Cleveland, then it must follow that 23 cents is an unreasonable charge for the through service from Appalachia to Cleveland.

The complainants support this contention by showing that the two local shipments involve four terminal services, while the through shipment involves but two, and that the cost of the service in case of the two local shipments is greater than that involved in the one through shipment. Reference is made to the familiar rule that for a long-distance movement the rate should not, and ordinarily does not, increase for the last miles of that movement by the amount of the local rate for that distance.

Considered as an abstract proposition, the argument of the complainant has great weight. The considerations to which he refers have been often pointed out by the Commission itself, which has frequently held that the through charge should be less than the combination of the intermediate rates. *Burnham, Hanna, Munger Dry*

Goods Co. v. C., R. I. & P. Ry Co., 14 I. C. C., 299; *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555; *Randolph Lumber Co. v. S. A. L. Ry.*, 13 I. C. C., 601.

While, however, through rates ought not in theory to be constructed by combination of locals, and while this Commission if constructing rates *de novo* might not adopt that method, still in many parts of the country they have been so constructed. This is generally true between points north and south of the Ohio River. While many commodities move on through rates, and while in some instances proportional rates to and from the river are in effect which are less than local rates, in the great majority of instances the combination rate is in effect.

This is true of rates upon lumber from southern points of production to points of consumption in the middle west. In constructing these rates the full local from the Ohio River north seems to be used in all cases. From eastern Alabama, Georgia, and Florida there is in effect by some and perhaps by all lines proportional rates to Cairo less than the local rates, but from other territory the full local rate is used.

The complainants called attention to cases in which the line from Cincinnati north of the river received less than its local rate, and to other cases where the line south of the river shrunk its local on lumber, but this results from the fact that the route through Cincinnati is a circuitous one, or rather that the lowest combination between the point of origin and the point of destination is via some other Ohio River crossing, and this rate is met by the lines leading through Cincinnati.

To sustain the argument of the complainants we should be required without any further showing to reduce all class and commodity rates between points north and south of the Ohio River where those rates are now made upon the combination. This Commission has never held that this fact alone was sufficient to call for such a reduction. Where, upon examination, it has seemed that the through charge was excessive, we have reduced the rate applicable to the through carriage to a point less than the local rate for a portion of the distance. This was done in the *Burnham-Hanna-Munger case*, *supra*, and also in the *Kindel case*, *supra*; but before making a reduction upon this ground we should be satisfied either that the rate is unreasonable or that discrimination results.

The distance from Appalachia to Cincinnati is 294 miles and the rate 13 cents. From Cincinnati to Cleveland the distance is 263 miles and the rate 10 cents. We are not prepared to say that either of these local rates is excessive, nor can we hold, upon a mere inspection of the rate, that 23 cents for 557 miles is unreasonable. While that rate is certainly ample, it is not clearly excessive.

Taking this case as presented to us, without attempting to examine each particular rate and without definitely approving each particu-

lar rate, we hold that the mere fact that these rates are constructed by combination upon the Ohio River does not show them to be unreasonable, and this contention of the complainants is not sustained.

Let it be noted that these rates are attacked solely upon the ground of unreasonableness and that no element of discrimination is involved. It is evident that a locality upon the Ohio River might acquire, by virtue of the fact that these lumber rates were made by combination upon that river, an advantage in the merchandising of lumber over a competing point either north or south of the river, for the reason that the sum of the rates in and out of Cincinnati would equal the through rate while the locals in or out of the competing point might be greater. What should be done with a complaint of that sort is not considered.

THE FOURTH SECTION.

The Louisville & Nashville Railroad and its connections north of the Ohio River have established and maintain joint through rates from points upon the Cumberland division to points in Buffalo-Pittsburgh territory which are lower than the combination rate to intermediate points. Thus, the rate from Appalachia to Pittsburgh upon ordinary lumber is $19\frac{1}{2}$ cents, while to some intermediate point the combination rate may be as high as 23 cents. The complainants allege that this is an undue discrimination against the intermediate point under the third section and is also in violation of the fourth section.

The justification of the Louisville & Nashville for this departure from the rule of the fourth section is that the Southern Railway Company, which operates from territory in the immediate vicinity of Appalachia, establishes rates via its line through Asheville, and perhaps by other routes as well, to Buffalo-Pittsburgh territory, as low as that made by the defendants, and that in doing so it does not observe at intermediate points the rule of the fourth section.

The complainants, as shippers of lumber from points on the Cumberland division, enjoy in common with all other shippers the lower rate to the more distant point. No special damage to them, nor to the intermediate point, is shown in this proceeding. The discrimination, if one exists, arises out of the fact that the fourth section is violated. In other words, this is purely a fourth section question.

The Louisville & Nashville Railroad and its connections have filed with this Commission a fourth-section application asking to be permitted to continue to make the lower charge at the more distant point. The Southern Railway has filed a similar application, so these rates as to both these routes are protected for the present by these applications. No final conclusion can properly be reached without an investigation of the situation presented by these fourth-section applications.

Properly these applications should have been set down for hearing along with this case, but that was overlooked. They will at once be assigned for investigation.

The only question remaining is that of reparation, for which the complainants pray, both on the ground that the rates paid have been unreasonable and on the further ground that they are discriminatory. In case it is finally found that the defendants are in violation of the fourth section, should reparation be awarded on that account for the period which has elapsed up to the date of that finding?

In our opinion such reparation should not be granted in this case.

The fourth section as originally enacted was not effective in preventing a violation of the long-and-short-haul rule, and it had been for many years understood that this rule was habitually disregarded. By amendment effective June 18, 1910, that section was strengthened. This amendment provided that in cases where the rule of the fourth section was being violated carriers might file with the Commission, on or before a certain date, applications asking leave to continue to disregard the long-and-short-haul rule, and that no carrier should be treated as in default of the amended fourth section until the Commission had investigated and passed upon this application.

Under this provision over 5,000 applications were filed before the date fixed, and these two applications were among that number. Now, we think that it plainly appears, from the action of Congress in providing that no carrier should be proceeded against for a violation of the fourth section until its application had been acted upon, that it was the intent of Congress to say that matters should be left *in statu quo* until that time. It would be inconsistent to grant reparation for a disregard of the rule of the fourth section during that period within which the lawmaking authority had expressly sanctioned existence of such disregard.

Without undertaking, therefore, to lay down any rule as to the granting of reparation for violations of the fourth section, we hold that no damages can be given up to the time when the Commission passes upon these fourth-section applications, unless, possibly, a case is made out under the third section, which might carry with it an award of damages, or unless under the first section the rate to the intermediate point has been found unreasonable.

This apparently disposes of this complaint, but lest the complainants may possibly be entitled to some further relief in this case upon the facts developed in the fourth-section hearing the complaint will be retained on the docket and notice given the complainants of the hearing upon the fourth-section applications.

25 L. C. C.

No. 5011.
P. C. KAMM & COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted November 7, 1912. Decided November 12, 1912.

It appears that the Milwaukee Company charges complainant one-fourth cent per bushel upon his grain for elevation at Milwaukee, if it is ordered out in 10 days, and that the lines east from Milwaukee pay a charge to the owner or operator of the elevator in the same sum for the transfer service, the result being that the Milwaukee Company receives for transferring grain through its elevator one-fourth cent per bushel from complainant and one-fourth cent per bushel from the eastern lines. Upon complaint that the elevation charges so exacted are unreasonable; *Held*, That the Milwaukee Company receives double pay for the service of transfer, which is manifestly unjust, and that its tariffs should be so modified as to provide that when that company collects this transfer charge from the eastern lines no transfer charge shall be made against the grain dealer. Reparation awarded.

G. W. Kruse for complainant.

G. A. Schroeder for Milwaukee Chamber of Commerce.

James Stillwell and *M. S. Connelly* for Pennsylvania Company and Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

C. D. Clark for Baltimore & Ohio Railroad Company.

W. W. Collin, jr., for Lake Shore & Michigan Southern Railway Company; Michigan Central Railroad Company; and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

G. W. Kretzinger and *G. W. Kretzinger, jr.*, for Grand Trunk Western Railway Company and Grand Trunk Railway Company of Canada.

F. A. Butterworth and *W. S. White* for Perre Marquette Railroad Company.

J. H. Grant, *F. B. Carpenter*, and *H. D. Palmer* for New York, Chicago & St. Louis Railroad Company.

O. W. Dynes and *Burton Hanson* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

The complainant is P. C. Kamm, who does a grain business under the firm style of P. C. Kamm & Company at Milwaukee, Wis. His complaint is that he has been subjected to the payment of unreasonable elevation charges in the conduct of his business.

The Chicago, Milwaukee & St. Paul Railway Company was not named as a party to the complaint, but its attorney was present at the hearing and when it became evident that the matter could not be disposed of without the appearance of that company stated that he would enter an appearance and waive formal complaint and other proceedings, allowing the matter to be disposed of as though properly presented by the pleadings.

There are four grain elevators in the city of Milwaukee, one owned by the Chicago & North Western Railway Company and located upon the tracks of that company, and three owned by the Chicago, Milwaukee & St. Paul Railway Company and located upon its tracks. It did not clearly appear whether the North Western elevator was operated by that railway company or by some third party under lease, but it was said that grain could be passed through that elevator without the payment of transfer charges. If, however, the grain did not reach Milwaukee via the North Western line a switching charge was necessary to place the car at that elevator.

Two of the St. Paul elevators are leased to private parties and operated by them, but the third is operated by the railway company itself. That company files a tariff with the Commission by which it names a transfer charge of one-fourth cent per bushel, with ten days' free storage, upon grain passing through the elevator. The complainant in the conduct of his business finds it necessary to load grain into an elevator at Milwaukee and subsequently order it out for shipment to various eastern destinations. Upon grain so handled he is charged by the Milwaukee Company one-fourth cent per bushel, provided grain is ordered out within the ten-day limit.

The testimony was that the lessees of the other two elevators have sufficient business of their own to occupy those elevators and do not transact to any extent business for other individuals. As a practical matter, therefore, the complainant must pass his grain either through the North Western elevator or through the elevator operated by the Milwaukee Company.

Lines leading east from Milwaukee publish in their tariffs what is styled a transfer charge of one-fourth cent per bushel and under these tariffs they pay to the owner or operator of the elevator at which the cars received by them are loaded one-fourth of 1 cent per bushel for the transfer service. Up to September 1, 1911, the Mil-

waukee Company seems to have collected from the various eastern lines this transfer charge. The result was therefore that the Milwaukee Company received for transferring grain through its elevator one-fourth cent per bushel from the complainant and one-fourth cent per bushel from the eastern lines.

It appeared that the operator of the North Western elevator also collects this one-fourth cent per bushel from the eastern lines and pays the same to the owner of the grain. Since the charge of that elevator for transfer is one-fourth cent per bushel, with 10 days' storage, it results that upon grain passing through that elevator no transfer charge whatever is paid by the grain dealer. If he pays the charge in the first instance to the elevator, it is subsequently refunded to him. The testimony is not clear whether the charge is paid at all.

It further appeared that the lessees of the two other St. Paul elevators receive from eastern lines the transfer charge of one-fourth cent per bushel for the service which they furnish.

It follows therefore that the complainant and all others using the Milwaukee elevator at Milwaukee are, as a practical matter, compelled to pay one-fourth cent per bushel more than their competitors who use the North Western or the leased Milwaukee elevators. The complainant insists that this is a discrimination which the Commission by its order should correct.

His original purpose in bringing the complaint was to obtain an order against the eastern lines, who were alone named defendants, requiring them to so amend their tariffs that in the future the allowance would be paid not to the elevator but to the owner of the grain, with a further order requiring the eastern lines to pay to the complainant with respect to the grain handled for him by them this one-fourth cent per bushel which had not been collected by the Milwaukee company on account of shipments moving since September 1, 1911.

This subject of elevation allowances has been before the Commission, and finally the Supreme Court of the United States. Such charges are sustained on the ground that they represent a transfer service involved in the transfer of the grain from car to car in course of its transportation. This service is rendered not by the owner of the grain but by the elevator through which the grain is passed. Since the service of transfer is performed by the Milwaukee company through its house, it seems evident that payment for that service must be due to the Milwaukee company and that no order can be made requiring these eastern lines to make payment to the owner of the grain. Clearly such payment could not be made under the present tariffs, which expressly provide that payment shall be made to the elevator, nor do we think that the eastern lines could properly

so frame their tariffs as to permit payment for this transfer service to the owner of the grain, who does not perform any transfer service, who is a shipper, and to whom such payment would be in effect a concession from the established rate. We hold therefore that no order can be made against the eastern lines.

The question remains whether any order should be made against the Chicago, Milwaukee & St. Paul Railway Company. That company in effect at the present time collects twice for this transfer charge. Should it be permitted to do so?

Transfer charges of this character are usual in many parts of the United States. In Chicago this identical charge of one-fourth of 1 cent per bushel has for many years been paid by the road receiving the grain to the elevator from which it is loaded. Upon the Missouri River in recent years similar allowances have been made, always to the elevator itself and never to the owner of the grain. It seems, however, to be the universal practice for the elevator receiving this allowance to give to the owner of the grain the benefit of it. If the elevator charge is the same as the transfer allowance which the elevator receives, then no charge is made against the owner of the grain, that service being in effect paid for by the railway company. If, as sometimes happens, the elevation charge exceeds one-fourth of 1 cent per bushel, as it would upon the Missouri River at the present time, or as it always does in the city of Chicago and at many other eastern points, then the owner is credited with the amount received from the railway company by way of this transfer charge. The only instance which has so far come to the attention of the Commission in all its investigations into this subject of elevation allowances where the elevator does not in some form give to the owner of the grain the benefit of this transfer charge is in the case of the elevator of the Chicago, Milwaukee & St. Paul Railway Company at Milwaukee.

It has been suggested to the Milwaukee Company that it might perhaps with propriety pay over to the grain dealer the amount which it collects from the eastern lines, but that company is apprehensive that such a payment to the owner of the grain, if made by it, might be tantamount to a rebate.

Since the Milwaukee Company directly operates this elevator, that company may properly be held directly responsible for the entire transaction involved in the passing of the grain through its elevator. So considered, it is evident that this company receives double pay for the service of transfer, which is manifestly unjust. In our opinion, the tariffs of that company should be so modified as to provide that when it does, or may under the tariffs of the eastern lines, collect this transfer charge of one-fourth cent per bushel no transfer charge shall be made against the grain dealer.

25 L. C. C.

Assuming that we are acting upon a complaint charging the Milwaukee Company with exacting unreasonable elevation charges and praying for reparation with respect to past transactions, we are of the further opinion that such reparation should be granted. If a formal complaint had been filed the complainant would be entitled to such reparation for a period of two years preceding the filing of the complaint, but inasmuch as the Milwaukee road was not originally named as a defendant and inasmuch as the complainant upon the hearing stated that he only claimed reimbursement as to those shipments named in his complaint which had accrued since September 1, 1911, our order for reparation will be confined to that period.

The complainant has filed with his complaint a list of shipments said to have moved over various eastern lines since the above date. Up to the present time the Milwaukee Company has not collected from the eastern lines the amount of this transfer charge as to these shipments, but expresses the intent to do so. Reparation will be awarded the complainant against the Chicago, Milwaukee & St. Paul Railway Company as to all those shipments with respect to which, under the tariffs of the eastern lines, it does or can collect this elevation allowance.

The tariffs of the eastern lines state that the transfer charge will be paid only when the transfer is made for certain specified reasons. As a practical matter these instances appear to cover all shipments, but if a case should arise where the transfer charge could not be legally collected by the Milwaukee Company from the eastern line under the published tariff of that line, then with respect to that shipment the complainant would not be entitled to reparation, since the Milwaukee Company is entitled to payment for the service from the complainant if it can not obtain such payment from the eastern line.

No order will at this time be made for the future, but the Milwaukee Company will be expected to revise its elevation tariff in accordance with the views above expressed. The parties should on or before January 1, 1913, file with the Commission a statement showing in detail the amount due under this holding, from the Milwaukee Company to the complainant, so that an order may be made permitting and directing payment of the same. If the parties can not agree upon the amount the Commission will, on motion of the complainant, proceed with a further hearing for the purpose of determining the same.

25 I. C. C.

No. 4209.

EAGLE PENCIL COMPANY

v.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.

Submitted February 1, 1912. Decided November 11, 1912.

Rail-and-water rate of 50 cents per 100 pounds on cedar-pencil material from South Pittsburg, Tenn., to New York, N. Y., not found to be unreasonable or unduly discriminatory.

Arthur B. Hayes for complainant.

R. Walton Moore and *Charles J. Rixey, jr.*, for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation with place of business at Chattanooga, Tenn., is engaged in buying and manufacturing cedar slats and shipping them from its mills in Tennessee to New York, N. Y. By petition, filed July 7, 1911, it attacks defendants' rail-and-water rate of 50 cents per 100 pounds for the transportation of carload shipments of red-cedar slats from South Pittsburg, Tenn., to New York City, alleging that said rate is unreasonable and subjects complainant and its traffic to undue and unreasonable prejudice and disadvantage. It is averred that defendants publish a rail-and-water rate of 31 cents applicable on this traffic from points more distant from New York City than is South Pittsburg. Complainant seeks reparation and the establishment of a lower rate for the future.

On March 11, 1911, complainant shipped from South Pittsburg to New York via the lines of the Nashville, Chattanooga & St. Louis Railway and connecting carriers to Norfolk, Va., thence via Old Dominion Steamship Company to destination, 691 bags of cedar boards weighing 58,200 pounds, on which charges were collected in the sum of \$290.99 at the rate of 50 cents per 100 pounds.

There are a number of manufacturers of cedar-pencil material located at local stations along the line of the Nashville, Chattanooga & St. Louis Railway Company in the vicinity of Chattanooga, Tenn. Complainant operates a mill at South Pittsburg, a point located on

the Pikesville branch of the latter road, 30 miles southwest of Chattanooga. Shipments from South Pittsburg, en route to New York, pass through Chattanooga. A blanket rate of 50 cents on cedar-pencil material applies from all these local stations to New York.

In support of its claim complainant offered evidence to show that the rail-and-water rate on this commodity from Lebanon, Tenn., a point 157 miles west of South Pittsburg to New York, is 41 cents when routed over the Nashville, Chattanooga & St. Louis Railway and connecting lines to Norfolk and thence via the Old Dominion Steamship Company to New York, and 36 cents when routed via the Tennessee Central Railroad in connection with the Southern Railway and the Old Dominion Steamship Company; that from Paint Rock, Ala., a point 45 or 50 miles farther from New York than South Pittsburg, the rate to New York is 49 cents, all rail, and 43 cents, rail and water; and that the rate on cedar, cherry, mahogany, and other woods of value from Chattanooga to New York is 31 cents. Complainant contends that cedar-pencil material, being manufactured of inferior wood, should not take a higher rate than that applicable on cedar, cherry, and mahogany lumber, and that while the rate from South Pittsburg on cedar-pencil material might fairly take a slight differential over the rate on cedar, cherry, and mahogany lumber from Chattanooga, such rate should not be greater than 35 or 36 cents to New York.

The record shows that not every grade of cedar can be used for the manufacture of cedar-pencil material, commonly known as cedar-pencil boards or slats, but only what is known as the heart or the red wood of the original-growth cedar is suitable for the purpose. The sap or white wood is classed as refuse or waste from the manufacture of red-cedar pencil slats and is nothing like as valuable as the red cedar. The sap or white wood is taken off in the manufacture of pencil material and can not be used in the manufacture of pencils. Even second-growth cedar is worthless for this purpose. Years ago pencil material was shipped to the manufacturers in the form of squared cedar logs—that is, large trees squared down to the red, all the white or sap being taken off; but the original-growth timber has now been nearly exhausted and shipments of squared cedar logs are rare. When it was realized that the original-growth timber was fast disappearing it was discovered that by utilizing fence rails and old stumps of cedar trees, by pulling down old barns or other buildings which had been constructed years ago from this wood the material could be sawed into pencil slats and transported to the manufacturers in this shape. From this source the supply of red cedar for pencil slats is now almost exclusively drawn.

Counsel for defendants, in their brief, state that the 31-cent rate cited by complainant in its petition does not apply on red-cedar pencil slats, and that the complaint evidently refers to the rail-and-water rate from Paint Rock to New York via the Southern Railway and its connections on white cedar, which is described in the tariff as follows:

Slats, white cedar, refuse from the manufacture of red-cedar pencil and pen-holder slats, packed in crates, c. l. minimum weight 40,000 pounds.

The all-rail rate from Paint Rock to New York on white cedar via the Southern Railway is 37 cents, whereas the all-rail rate on red-cedar pencil slats is 49 cents. Paint Rock is a local station on the Southern Railway and is not served by the Nashville, Chattanooga & St. Louis Railway.

Lebanon is a junction point of the Nashville, Chattanooga & St. Louis Railway and the Tennessee Central Railroad. The general freight agent of the former company testified that when the plant at Lebanon was originally constructed the Tennessee Central Railroad put in a rate of 41 cents to New York and Jersey City via its line and connections; that thereupon the Nashville, Chattanooga & St. Louis Railway met this rate and that thereafter the Tennessee Central Railroad reduced the rate from Lebanon to 36 cents; and that the Nashville, Chattanooga & St. Louis Railway declined to meet the 36-cent rate, canceled the 41-cent rate, and retired from the business.

The following is a comparative statement of the rates on cedar pencil slats, squared logs, cedar lumber, and oak lumber in carloads, from South Pittsburg, Tenn., to New York, N. Y.:

	Cents.
Cedar slats -----	50
Squared cedar logs -----	51
Cedar lumber -----	37.5
Oak lumber -----	32.5

There is a considerable movement of cedar lumber from Chattanooga and the vicinity in the form of cedar squares, which are made from the second-growth cedar and are used in building fences or window sills. This lumber is unfit for making pencils and is of very much less value than pencil-slat material. A carload of oak lumber is worth between \$450 and \$500, while a carload of pencil slats, weighing 58,000 pounds, is worth between \$4,000 and \$4,500 f. o. b. car at the mill.

The record shows that the 50-cent rate on slat material from this territory has been in effect for a number of years. Evidence was offered to show that the Nashville, Chattanooga & St. Louis Railway, to enable the plants to reach out and draw their material to be manufactured into these slats, has established very low

rates on the raw material from the surrounding territory to the mills. Two other shippers engaged in the same industry expressed satisfaction with the present rate adjustment and stated that a reduction in the rate would not and could not have the effect of increasing the volume of traffic, as all the plants are now operated to their full capacity.

At the hearing it developed that the Nashville, Chattanooga & St. Louis Railway Company published a rate of 36 cents on this traffic from Nashville, Tenn., to New York. The latter road justified the lower rate from Nashville on the ground of competition at that point and states that it has made application for relief from the provisions of the fourth section. From an examination of all the facts and circumstances we are unable to find that the rate complained of is unreasonable or unduly discriminatory. The complaint, therefore, must be dismissed. It should be understood that the decision herein is without prejudice to any finding of the Commission respecting the application of the fourth section of the act. An order will be entered in accordance herewith.

25 I. C. C.

No. 4244.

EDWARD J. JOHNSON

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted July 10, 1912. Decided November 11, 1912.

Defendant's passenger tariff provided that a single passenger, in order to be entitled to occupy a compartment on the "California Limited" train, should have a minimum of one and one-half fare tickets. The baggage rule of defendant required a full first-class ticket for the carriage of a corpse in a baggage car, "in addition to a proper transportation" for an attendant. A passenger traveling on this train from San Diego, Cal., to Boston, Mass., accompanying a corpse, presented a ticket for the compartment but only one full-fare ticket for herself and a full fare for the corpse, and was therefore required by the conductor to purchase an additional half-fare ticket in order that she might occupy the compartment; *Held*, That one of the tickets presented was in compliance with the baggage rule, which left only one full-fare ticket for the transportation of the attendant, and under the tariff this was not sufficient to entitle the attendant to occupy a compartment on the "California Limited." Complaint dismissed.

E. J. Johnson for complainant in person.

James L. Coleman and *R. Dunlap* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a resident of Boston, Mass., in his complaint, filed July 17, 1911, alleges that he was compelled by the defendant to pay an unreasonable rate of fare for the transportation from Los Angeles, Cal., to Chicago, Ill., of an attendant who was accompanying the body of his deceased son. Reparation is asked.

Mr. Johnson's son died near San Diego, Cal., on June 3, 1910, and complainant engaged a Mrs. Campbell to accompany the body to Boston, and paid all the expenses incident to her trip. The arrangements for the transportation of the body and also for the transportation of Mrs. Campbell were made by the undertakers. Acting on behalf of the complainant, they purchased from the defendant at San Diego two first-class passenger tickets from San Diego to Boston, for which the charge of \$157.50 was exacted. They also purchased a

Pullman ticket for a compartment to Chicago on the "California Limited," for which they paid \$39.50.

The California Limited was a train having good appointments and service and no extra fare was required on it, but the following rule was in force:

A minimum of two whole first-class railroad tickets, either one way or round trip, is required for the exclusive use of a drawing-room, and minimum of one whole and one half first-class tickets, either one way or round trip, for the exclusive use of a compartment on California Limited trains Nos. 3 and 4.

The foregoing will apply to passengers purchasing Pullman accommodations * * * during March, April, May, and June of each year *eastbound*. During other portions of the year no extra transportation will be required of single occupants of drawing-rooms and compartments * * *.

At the time the tickets were purchased application was made for a berth to Chicago, and complainant alleges that the ticket agent at San Diego said that all berth space had been reserved and that the only available space was a compartment. It is alleged that it was on the strength of this statement that the ticket for the compartment was purchased. Apparently the parties applying for the space knew of the rule with reference to the occupancy of compartments and drawing rooms on the California Limited, because it is conceded by defendant that they inquired of the ticket agent whether the ticket for the dead body would be taken into consideration in connection with the application of the rule and they were told by him that it would be.

Mrs. Campbell took the California Limited, known as No. 4, leaving Los Angeles at 10 a. m., June 6, 1910. When the conductor examined her tickets he called her attention to the rule, refused to honor the ticket for the corpse as counting on the transportation necessary to entitle her to occupy the compartment, and required her to purchase an additional half-fare ticket to Chicago on the arrival of the train at Pasadena. The half-fare ticket cost \$29.90, and this action was brought to recover that amount.

Defendant concedes that the ticket agent at San Diego told the representative of complainant that the ticket for the corpse would be taken into account in applying the rule concerning the fares necessary to entitle a single person to occupy a compartment. This feature of the case is similar to the oft-occurring misquotation of rates by carriers, and it is well settled by the decisions of the Commission and the courts, including the Supreme Court of the United States, that the terms of the tariffs filed and published at the time of transportation are the sole guide in the assessing of transportation charges, under the provisions of the interstate-commerce act.

An examination of the tariffs of defendant in effect at the time in question shows a provision as follows:

Sub. 15. General Rules Regarding Handling of Corpses.

1. A corpse of a person of any age, if accompanied by a person in charge holding the usual certificate from a physician or Board of Health, will be accepted for transportation in baggage car, provided the person in charge offers one full first-class ticket for the carriage of the corpse in addition to *a proper transportation for his own passage.*

This baggage rule governing the transportation of corpses must be read in conjunction with the provisions before quoted from the tariff as to compartments on the California Limited, and the conclusion is inevitable that the attendant of a corpse should pay a fare and a half in addition to the ticket required for the corpse if said attendant desires to occupy alone a compartment on said train. It is our conclusion, therefore, that one of the tickets presented was in compliance with this baggage rule and that this left only one ticket which could be considered as presented for the passage of the attendant, and this one ticket, under the tariffs, was not sufficient to entitle the attendant to occupy a compartment, and that the additional half fare was the lawful requirement of said tariffs. The complaint will therefore be dismissed.

25 I. C. C.

No. 4580.
MILLARD P. RYLEY
v.
WABASH RAILROAD COMPANY.

No. 4580 (Sub-No. 1).
GLOBE ELEVATOR COMPANY
v.
SAME.

Submitted May 20, 1912. Decided November 11, 1912.

Complainants seek reparation at a rate of a quarter of a cent per bushel for elevation allowance on certain cars of grain elevated by them at Black Rock, N. Y. Defendant's tariffs did not provide for such allowance at Black Rock, and their refusal to pay the same was not discriminatory or otherwise in violation of the law. Complaints dismissed.

David Grant for complainants.

William L. Marcy for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, Millard P. Ryley, was operating the International Elevator at Black Rock, N. Y., during the months of December, 1907, and January, 1908. Subsequently, and until July 14, 1908, the same elevator was operated by complainant Globe Elevator Company. In their petitions, filed December 5, 1911, the complainants allege that during the time they were operating the elevator as aforesaid certain carloads of grain were elevated and weighed in the elevator; that for the service of elevating this grain complainants were entitled to receive an allowance of one-fourth cent per bushel; and that defendant refuses to make payment of the amount due for such elevation, for which reparation is sought. The claims were first filed with the Commission May 28, 1909.

The International Elevator is located on a spur connecting with the tracks of the Grand Trunk Railway at Black Rock, N. Y., and the Wabash Railroad has trackage rights over the spur, which enables it to reach the elevator with its own power. Complainant Ryley, during January, 1908, elevated 12 carloads of grain, aggregating 13,886.22 bushels, which arrived over the Wabash Railroad

and on which he claims an allowance of one-fourth of a cent per bushel, amounting to the sum of \$34.72. During the period from February 26 to July 14, 1908, the Globe Elevator Company handled 31 carloads of grain, likewise originating on the Wabash Railroad, aggregating 42,174.77 bushels, on which an allowance of one-fourth cent per bushel, amounting to the sum of \$105.46, is claimed.

A tariff of the Wabash Railroad effective March 13, 1907, in so far as it is here material, provided as follows:

To expedite the movement and to secure the prompt release and return of equipment, an allowance of one-fourth cent per bushel will be made by the Wabash R. R. for the service on grain in carloads transferred or unloaded by the elevators at Buffalo, N. Y., Detroit, Mich., and Toledo, Ohio, subject to the following conditions:

* * * * *

2. No allowance will be made when more than forty-eight hours elapse between the time of delivery of loads by the Wabash R. R. to the elevator of connecting lines and the release and return of the empty to the Wabash R. R. * * *

This tariff, which made no provision whatever for an allowance at Black Rock, was canceled by a tariff effective February 14, 1909, in which no provision was made for an elevation allowance either at Buffalo or at Black Rock, and there is at this time no provision for such an allowance at those points. In fact, at no time from 1906 down to the present has there been any provision for an allowance for elevation at Black Rock. Furthermore, while the cars were promptly unloaded after receipt, complainants admit that they were immediately loaded out with grain destined to the east and southeast over the lines of carriers other than the Wabash and were not returned to the defendant empty in compliance with the conditions upon which the allowance was made at Buffalo, namely, "the prompt release and return (empty) of equipment." It is true the reloaded cars were delivered to the defendant for a switching movement to the eastern carrier, but this did not constitute a release of the equipment nor put that company in possession of available empty cars, as contemplated by the tariff conditions governing the allowance at Buffalo.

Complainants base their claim for an allowance upon the holding of the Commission with reference to the reasonableness of a 48-hour time limit on the return of empty cars in *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.*, 15 I. C. C., 90, 101, but the holding in that case is not applicable here.

Upon the facts of record we do not find the refusal of defendant to make an allowance for elevation of the shipments in question to have been unduly discriminatory or otherwise in violation of the law. Complainants are not entitled to recovery, and an order of dismissal will be accordingly entered.

No. 4542.
HOLCKER-ELBERG MANUFACTURING COMPANY
v.
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY ET AL.

Submitted September 1, 1912. Decided November 11, 1912.

The advance in the rate for the transportation of automobile wind-shield frames from Joliet, Ill., to Dallas, Tex., not having been justified by the carriers; *Held*, That the advanced rate is unjust and unreasonable in so far as it exceeds the rate in effect prior to said advance. Reparation awarded.

Ferd Relgen for complainant.

Fred Smith for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation having its principal place of business at Kansas City, Mo., with a branch at Dallas, Tex. By its petition, filed November 6, 1911, it alleges that the rate and classification applied to the transportation of a shipment of automobile wind-shield frames from Joliet, Ill., to Dallas, Tex., was unreasonable. Reparation is asked.

March 13, 1911, the complainant caused to be shipped from Joliet to Dallas, 16 boxes of automobile wind-shield frames weighing 1,550 pounds, upon which the defendants charged a rate of \$3.34 per 100 pounds, or a total sum of \$51.77. This rate complainant alleges was unreasonable and excessive to the extent that it exceeded a rate of \$1.67 per 100 pounds.

Automobile wind-shield frames consist essentially of frames for supporting plate glass, made of brass tubing and channeling, polished, and sometimes have ornamental fillers of valuable woods. Wind-shield frames, boxed as this shipment was, occupy the same cubic space as boxed wind shields, though they, of course, weigh less.

Prior to October 1, 1910, self-propelling vehicle parts of metal, not otherwise specified, when boxed or crated, were rated at first class under the western classification; and the automobile wind-shield frames here involved, prior to that date, would have been transported from Joliet, Ill., to Dallas, Tex., at the first-class rate of \$1.67 per

100 pounds. Effective on that date the defendants increased the rate on such shipments 100 per cent by a change in the classification.

Section 15 of the act to regulate commerce, as amended June 18, 1910, places the burden of proof upon the carrier to show the justice and reasonableness of any rate increased after January 1, 1910, and while testimony tending to establish the reasonableness of this increased rate was produced in behalf of the defendants, we do not think that a rate yielding a revenue of 6 cents per ton-mile for such a long haul can be held to be reasonable on the showing made.

Upon the record we are of the opinion, and find, that the rate of \$3.34 charged for the transportation of complainant's shipment as hereinbefore set forth was unreasonable to the extent that it exceeded \$1.67, and defendants will be required to maintain a rate for the future upon the traffic in question not in excess of that amount. We further find that complainant made the shipment described in the foregoing statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amount paid at the rate of \$3.34 and the amount it would have paid at the rate of \$1.67, hereinbefore found reasonable; and that complainant is therefore entitled to reparation in the sum of \$25.88, with interest from March 22, 1911. An order will be entered accordingly.

25 I. C. C.

No. 4533.
J. W. WRIGHT & COMPANY
v.
VANDALIA RAILROAD COMPANY.

Submitted June 27, 1912. Decided November 11, 1912.

Charges collected for the transportation of a less-than-carload shipment of machinery from Greenville, Ill., to St. Louis, Mo. found to have been unreasonable. Reparation awarded.

C. H. Rodehaver for complainant.

S. W. Fordyce, jr., for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are a copartnership dealing in machinery, with place of business at St. Louis, Mo. By petition, filed October 30, 1911, it is alleged that defendant assessed unreasonable and excessive charges for the transportation of a less-than-carload shipment of machinery from Greenville, Ill., to St. Louis, Mo. Reparation is asked.

November 3, 1909, there was shipped from Greenville to the complainant, one lathe "set up," with one box attached, upon which the defendant collected freight charges in the sum of \$8.42, based upon a weight of 3,200 pounds and the first-class rate of 26.3 cents per 100 pounds. The shipment was governed by Illinois classification which provided for machines and machinery in less than carloads as follows:

Machines and machinery, n. o. s., set up, first class.

Machines, machinery or mills, heavy, weighing 2 tons or over (actual weight), to each complete machine or mill (if having connections and detachable parts, same to be removed from frame of machine or mill and boxed), third class.

The third-class rate from Greenville to St. Louis was 18.8 cents, and had the shipment weighed 2 tons or 4,000 pounds, the charges under the item last above quoted would have been \$7.52, or 90 cents less than was assessed. Rule 12 of the classification provided:

A smaller quantity of freight shall not be charged a greater sum than a larger quantity; for instance, the charge for 120 bbls. of flour, l. c. l., shall not be greater than for 125 bbls., c. l. In no case shall the charge for a consignment of freight (shipped at one time by one shipper to one consignee and destination)

be greater when taken at actual or estimated weight and l. c. l. rate, than on basis of c. l. weight and rate, nor shall the charge for a full carload on basis of c. l. weight and rate exceed the charge on basis of actual or estimated weight and l. c. l. rate.

Complainant contends that the application of a higher aggregate charge upon a shipment of 3,200 pounds than upon a shipment of 4,000 pounds is unjust and unreasonable. This, defendant resists, and relying upon the strict interpretation of the rule, claims that it only prevents the application of a higher charge upon less than carloads than upon carloads of the same commodity. Under the rule as it is, the position of defendant seems sound, but the rule is unreasonable in that it does not extend the principle to less-than-carload shipments, when, as here, there are two or more rates dependent upon the quantity shipped.

Considering all the facts and circumstances, we are of the opinion and find that the charges collected for the transportation of this shipment were unreasonable to the extent that they exceeded \$7.52. We further find that complainants received the shipment herein described and paid the charges thereon in the amount herein found unreasonable; that they have been damaged to the extent of the difference between the amount which they did pay and the amount which they would have paid had the charges herein found reasonable been applied; and that they are entitled to an award of reparation in the sum of 90 cents, with interest from January 7, 1910. An order will be entered accordingly.

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No. 4924.
GALVESTON COMMERCIAL ASSOCIATION ET AL.
v.
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted October 18, 1912. Decided November 12, 1912.

1. The Commission has no direct authority to require the issuing of a through export bill of lading, since it has no jurisdiction over the water carrier, which is a necessary party to that contract, but this must not be understood as meaning that the Commission may not act upon the rail carrier, which is subject to its jurisdiction in a proper case where the ocean carrier stands ready to enter into these through arrangements upon reasonable terms.
2. It is not unreasonable to require of the carrier to ascertain before receiving the cotton for transportation to Galveston for export whether it can be cared for at Galveston upon its receipt and the ship agent should be at once provided with a copy of whatever contract of shipment has been signed by the railway agent on his behalf.
3. To decline to issue bills of lading through Galveston while issuing them through other ports would be an undue discrimination against Galveston, unless justified by difference in conditions at the different ports, which does not appear in this record.
4. The public interest requires the issuance of these through bills of lading. The cotton crop of Texas can not be handled without great inconvenience under any other system, and unless there is some strong objection that method should be maintained, but when the through export bill is issued the shipper can not, as a practical matter, be made answerable for demurrage charges. This charge should be cast upon the ship agent upon such terms and conditions as will not impose upon him an unreasonable burden.
5. After January 1, 1913, no justification can exist for not imposing substantially equivalent demurrage charges at New Orleans and at Texas ports, which are imposed at Galveston, and it will be an undue discrimination not to do so.
6. At least six days' free time should be allowed at Galveston upon export business, and if the consignee, before 6 o'clock in the evening of the sixth day, orders the car placed for unloading, the car shall be treated as unloaded during the sixth day, and no demurrage assessed against it, provided there is room upon the pier to unload it.
7. Conditions at Galveston call for the application of an average demurrage rule, and four days is found to be a just period as the basis for computing such average demurrage.
8. Reparation denied.

H. H. Haines for complainants.

J. R. Babcock for Dallas Chamber of Commerce and Dallas Clearing House Association.

Eugene B. Guthrie for Dallas Cotton Exchange.

T. J. Norton and *F. B. Houghton* for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

H. A. Scandrett and *H. M. Garwood* for Galveston, Harrisburg & San Antonio Railway Company; Houston & Texas Central Railroad Company; and Houston, East & West Texas Railway Company.

W. B. Groseclose and *Alex. Coke* for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

Horace Booth and *H. G. Herbel* for International & Great Northern Railway Company.

J. T. Bowe and *N. H. Lassiter* for Trinity & Brazos Valley Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The allegations of this complaint are three:

First. That the defendants issue through bills of lading for the handling of export traffic through other ports of export, while declining to do so through the port of Galveston.

Second. That the defendants impose upon export traffic moving under through bills of lading demurrage charges at the port of Galveston, while imposing no similar charges at other rival ports.

Third. That the demurrage free time allowed upon export business at the port of Galveston is unjust and unreasonable.

There is incidentally a claim for reparation on account of demurrage charges which certain of the complainants have been compelled to pay during the past two years.

The questions involved relate to all commodities which are moved upon through export bills of lading, but the principal item of export through the port of Galveston is cotton, and the testimony in this case has been mainly directed to the movement of that article. We shall in this discussion confine ourselves to that commodity in so far as any particular commodity is referred to.

In what is known as the *Cosmopolitan case*, 13 I. C. C., 266, the Commission decided that its jurisdiction over export business was limited to the rail haul from the interior point to the port of export. It followed that the rail carrier must publish and maintain only its charge between the interior point and the port and could not make

and publish through export rates applying from the interior point, where the traffic was taken up by the rail carrier, to the foreign port of destination.

In announcing this decision the Commission stated that the conclusion arrived at would not interfere with the making of arrangements between railroads and steamship companies for the handling of export traffic upon through bills of lading, and various arrangements looking to this end are in force. This case only deals with the situation as applied to the movement of cotton through the port of Galveston.

These defendants in recent years have issued in connection with steamships serving Galveston what is known as a through bill of lading, but what is really two bills of lading. There is first an inland bill of the rail carriers specifying the terms under which traffic will be handled from the interior point to the port of export. This usually delivers the traffic at the ship side or on the dock for loading by the ship. There is then a ship's bill of lading by which the vessel agrees to transport the traffic from the dock to the foreign port. The rate inserted in the bill of lading is made up of the published inland rate of the rail carrier, plus the ocean rate of the vessel. This rate is frequently and perhaps usually named in one amount but is ascertained as above indicated.

The contract of the railroad only extends to the port and the contract of the ship begins at the port but by an arrangement between the railroad and the ship the agent of the railroad at the interior point executes the bill of lading for both rail and water.

The inland part of the rate is, as already noted, a fixed quantity determined by the published schedules of the carrier, and it can only be varied by varying the published scheduled rate in accordance with law. Upon the other hand, the ocean rate varies frequently from day to day, depending upon the price of ocean freights. The ocean rate is therefore a matter of bargain and sale and may become the subject of contract.

This being so, there must be some means by which the shipper desiring to make a through contract for the movement of his export business can ascertain and agree upon the ocean rate. It has appeared in former investigations of the Commission that the shipper sometimes made for himself the ocean engagement while in other cases this was done for the shipper by the railroad, which would ascertain the going water rate and combine that rate with its own published tariff for the purpose of constructing the through rate. At the port of Galveston this service is usually performed by what are known as steamship agents.

The status and function of these ship agents, some of whom are complainants in this proceeding, are not very clearly defined in the

testimony. Sometimes they are apparently the agents of a single line of steamships and confine their activities entirely to the solicitation of business for that line. Sometimes they represent no line at all, their duty being to charter vessels for particular sailings and to fill those vessels when chartered. Usually they combine the function of an agent for a particular line with a certain amount of charter business upon their own account.

The ship agent contracts with the interior shipper for the shipment of his freight from the interior point to the foreign destination. This contract, or engagement as it is usually called, provides generally a time limit within which the traffic shall be delivered to the railway at the interior point or within which it shall be delivered to the steamer at Galveston. Ordinarily the former style of engagement is used. It sometimes specifies the steamship by name which is to carry the freight from the port, but more usually it names the line by which the business is to be handled. The through rate is always specified.

It is evident that if this freight is shipped from the interior point to the port of export so that it reaches the port before the vessel is there to receive it, it must be stored either in the cars of the railway or elsewhere awaiting the arrival of the ship. At Galveston facilities for the storage of cotton are comparatively limited, so that the great bulk of this traffic can not be unloaded until the ship has actually arrived. If, therefore, this cotton is sent to Galveston in advance of the arrival of the vessel by which it is to go out, it must, as a practical matter, remain in the cars of the rail carrier until the arrival of the ship.

In 1906 there occurred a very severe congestion at the port of Galveston. For some four months that port was blocked to such an extent that traffic could only be handled through it at very great expense and to a very limited extent. This blockade was a serious injury to the reputation of the port and entailed heavy losses upon the carriers operating through that port. In view of that experience the railway lines serving the port of Galveston at once addressed their attention to some means by which a recurrence of those conditions could be prevented.

Ordinarily in the handling of domestic business a certain time is allowed the shipper for the unloading of his freight, and a demurrage charge is imposed after the expiration of that period. At Galveston, as will be seen later, the shipper does not unload the freight, this service being performed by the railroad. In case of these through bills of lading the traffic is delivered to the carrier at the interior point and does not again come into the possession of the shipper until it is delivered to the consignee at the foreign port. That is to say, the shipper does not take possession of his property

at Galveston and can not therefore be said to be guilty of any delay which may occur at that port.

Nevertheless, the railroads serving Galveston determined to establish and enforce what was equivalent to a demurrage rule against this business moving on through bills. They fixed a period of 5 days in case of cotton, during which it might be stored free in the car before being unloaded. If at the expiration of that time the car was not released, a demurrage charge of \$1 per day was imposed.

Plainly the difficulty lay in collecting this charge. The shipper had nothing to do with this traffic at Galveston. He had delivered the cotton to the railway under contract, calling for its through transportation to the foreign port of destination, and it was hardly consistent to penalize him for something for which he was in no way responsible. The railways finally reached the conclusion that they would require the payment of the demurrage from the ship agents. These ship agents, as has been seen, make the contract of engagement, and thereby fix the time at which a shipment shall be made from the interior point. They arrange with the ship for the transportation of the business from the port, and that arrangement includes the time when the ship shall reach the port prepared to take on its cargo. It is their duty to properly time the shipment from the interior and the movement of the vessel so that the two may correspond and no delay occur. They, say the railways, are the only persons who can be made responsible for the arrival of the ship, and they should therefore pay the port demurrage.

The railways accordingly addressed to the ship agents and the ship lines a communication stating that on and after a certain day no through bills of lading would be issued via the port of Galveston unless the ship agent or the vessel would agree to pay whatever demurrage charges might accrue under the above rule. While there seems to have been at first a good deal of dissent upon the part of the ships and ship agents to this proposition, the railroads remained firm and the ship agents finally came to their terms.

A formal agreement was drawn up between the railroads serving Galveston and various ship lines and ship agents operating at Galveston, by the terms of which the railways agreed to issue through bills of lading and the ship agents upon their part agreed to pay any demurrage which might accrue as above.

This contract took effect August 17, 1908. For the first three years very little demurrage accrued and very little was therefore paid by the ship agents under the contract, but in the year 1911, the cotton crop being larger and considerable difficulty being experienced in obtaining the necessary ocean service, very considerable amounts of demurrage accrued against certain of these ship agents. This seems to have occasioned such dissatisfaction that on May 20,

1912, the ship agents and the lines they represent, as they might under the terms of the contract, served notice that they would not be bound by it from and after June 20.

Thereupon the railroads notified shippers that on and after that date no through bills of lading would be issued via the port of Galveston. This occasioned a good deal of consternation among shippers, and efforts were made to compromise the matter in some form. These having failed, this petition was filed by the Galveston commercial interests and the ship agents.

Looking to the handling of the cotton crop of Texas, and this was the only matter presented to us upon the hearing, it is of first importance that through export bills of lading be issued. As soon as the shipper obtains his through export bill it is available to him for the purpose of credit. He may use it as collateral for his own obligation, or, as is generally done, he may draw upon the vendee of the cotton for the price, attaching the bill of lading to the bill of exchange as security. In this way the money is provided with which to handle the cotton crop of Texas.

Formerly the railroads issued local bills of lading to the port, and these were exchanged without waiting for the arrival of the ship by the ship agent for an ocean bill, which could then be used for banking purposes in the same way that the through bill is now used. But great dissatisfaction arose over this method of procedure, for the reason that long periods might elapse before the cotton reached the foreign destination. In case of the congestion at Galveston, already referred to, drafts were paid months before the cotton was received.

This led to a conference of bankers and shippers, at which it was agreed that no ocean bill of lading should be issued until the property was actually loaded upon the ship. This was subsequently modified so as to permit the issuing of a ship's bill, provided the property had been actually delivered into the custody of the ship or the ship's agent, and the ship itself was within 22 days of the port where the traffic was to be loaded.

Under this procedure it is necessary to ship the cotton to Galveston and deliver it into the possession of the ship or the ship's agent before bankable paper can be obtained, and this often involves a considerable period of time between the receipt of the cotton at the interior point and its delivery to the ship in Galveston, since, as already stated, storage facilities at that point are limited. As applied to the actual conditions under which this cotton moves out through the port of Galveston, it is of very great importance to obtain from the initial rail line, at the time the cotton is delivered to it, a through export bill.

While, however, it is of vital consequence to cotton shippers and cotton growers in Texas that these through bills should be issued, this Commission has no direct jurisdiction to compel their issue nor to prescribe the terms and conditions upon which they shall issue, since it has no jurisdiction over the water carriers.

The railroad company has no power to issue the through billing without the consent of the steamship company. It should be carefully borne in mind at all steps of this discussion that while the document is termed a through bill of lading, it is in fact two separate bills of lading. The railroad is responsible for the carriage up to the port and for nothing beyond. The ship is responsible for the carriage from the port, and for nothing until it receives the traffic. These through export bills can only issue as the result of an agreement between the railway and the steamship.

It clearly follows from what has been already stated that the public interest requires the issuance of through bills of lading. The cotton crop of Texas can not be handled without great inconvenience under any other system, and unless there is some strong objection that method should be maintained. Assuming that such through bills are to be used, to what extent should demurrage be imposed at the port of Galveston and who should stand answerable for the demurrage charges?

We are clearly of the opinion that it is not only the right, but the plain duty of these carriers to devise some method by which the prompt unloading of their equipment will be secured. As servants of the general public they have no right to suffer their cars which are needed in other service to be tied up for long periods in storing this export freight, nor have they the right to permit their terminal facilities to be so congested that freight can not be promptly handled through the port of Galveston. By some proper and reasonable rule and regulation in the nature of a demurrage charge these carriers should secure the release of this equipment.

It does not seem feasible in case of through export bills to make this demurrage a charge against the shipper. The shipper has nothing to do with the cotton at the port of Galveston. From the time he delivers it to the railroad at the interior point up to the time when his consignee claims it under the bill of lading at the foreign destination he can in no respect control its movement. It would be unreasonable to charge him with a delay for which he is in no sense responsible.

Even if it were proper to cast this liability upon the shipper, there seems to be no practical way in which that liability could be enforced. If demurrage charges are to be collected without discrimination, the carrier must have the right to assert a lien upon the property with respect to those charges as well as the freight. The bill of lading

might provide that demurrage at the port would be charged in addition to the rate of freight stipulated, and such a provision would probably be valid as against the consignee, but it was said upon the hearing, and seems probable, that such a bill would contain an element of uncertainty which would render it unbankable. If it is to be used for security with the banks, it must contain no indefinite provisions.

If the property were handled upon a local rail bill to the port and a water bill from the port, there would be no objection to charging demurrage against the shipper, since he then takes possession of his property at the port and arranges for the unloading and storing of his freight awaiting the coming of the ship. But we are of the opinion that when the through export bill is used the shipper can not as a practical matter be made answerable for these charges.

The method by which this freight is secured has already been stated. The ship agent makes the engagement and he may provide as a part of that engagement when the cotton shall be loaded and shipped at the interior point. He knows, or he should know, substantially when the ship will be at the port for the purpose of receiving that cotton. He therefore controls the movement of the business both from the point of origin and from the port. The ship agent and he alone can so time the shipment from the country and the coming of the ship to the port that no unreasonable delay will occur in the handling of this traffic. The railroad, upon the other hand, can not do this. It exercises no influence or authority over the movement of the ship and it must receive and transport the traffic when tendered to it.

After a careful consideration of this matter in all its aspects it seems to us not unreasonable, and indeed necessary, that this burden should be cast upon the ship agent, provided always that the terms and conditions under which the business is handled and the liability assumed are just and reasonable.

While, however, we are of the opinion that the ship agent, by reason of his connection with the transaction, is that individual who must assume this particular responsibility, still both the railroad and the shipper should share with the ship agent the burden of handling this business upon these through export bills; that is, the business should be conducted upon such terms and conditions as will not impose upon the ship agent an unreasonable burden. One or more of the ship agents who appeared and gave testimony upon the hearing admitted in the course of that discussion that the ship agent was the proper party to assume these demurrage charges, provided the free time was properly adjusted and such other conditions imposed as would reasonably protect him.

The main point of difference between the ship agents and the railways, as developed upon the hearing, was the length of the free time which should be allowed, and this will be considered later in the report. Two other minor points of difference were developed which may be referred to here.

The first of these related to the confirmation of the engagement. It has been already seen that the ship agent enters into an engagement or contract with the shipper providing for the movement from the interior point to the foreign destination at a specified rate. This engagement generally provides that the ship agent may, within certain limits, designate the time when the cotton shall be shipped from the country, and manifestly this must be so if the cotton is to arrive at the port simultaneously with the ship which is to carry it abroad.

In the past the practice seems to have been for the shipper at the interior point to present to the railroad a certain quantity of cotton with the statement that this was to go by a certain line at a certain rate, whereupon the railway issued a through export bill naming that line and that rate.

The ship agents ask that before receiving the cotton and issuing the bill of lading the railway shall "confirm" the engagement; that is, shall telegraph to the ship agent at Galveston and ascertain whether that ship agent has entered into a contract for the movement of this traffic and whether, under the terms of that contract, the railroad should receive it and issue a through bill of lading. The reason for asking that this confirmation be obtained is that cotton is frequently shipped from the interior point sooner than it should be, thereby occasioning the very delay and congestion at Galveston which it is the desire of the railroads to prevent.

The carriers objected upon the hearing that they were obliged to receive the cotton and issue the bill of lading immediately, and that they could not take the necessary time required in obtaining the confirmation.

The carrier is probably obliged to receive the cotton and issue its local bill of lading to Galveston, but it is under no obligation to issue a through bill, and it does not seem unreasonable to require the carrier, before issuing this through bill, to confirm the engagement as requested by the ship agents. The carrier ought not, in advance of information as to the route and the rate, to issue a bill of lading which is really signed upon the authority of the ocean carrier. The ship agent, if required to pay this demurrage, has a right to protect himself by designating the date of shipment from the interior point, and it is not unreasonable to require of the carrier to ascertain before receiving the cotton for transportation to Galveston whether it can be cared for at Galveston upon its receipt.

When the shipper receives his through bill of lading it at once becomes available to him for banking purposes. There is therefore a continual tendency upon his part to make shipment and obtain his through bill at the earliest possible moment. When once the cotton has been delivered into the hands of the railway and the through bill of lading issued, his troubles are at an end. Now it is not an unjust requirement from the standpoint of the shipper that the railroad before it receives this traffic shall take sufficient time to ascertain from the ship which must be chargeable with the demurrage whether that traffic is entitled to move to the port of Galveston as requested.

The ship agents contended that this was an important provision and that by this means they could with proper care largely avoid the demurrage which they had been required in the past to pay. The principle contended for seems to us reasonable. These ship agents ought not to be asked to permit railroads to execute, in their behalf, these through bills of lading until they have had an opportunity to determine whether or not the traffic covered by the bill is embraced in a contract for shipment and whether it is shipped from the country station in accordance with the terms of that contract.

It was suggested upon the hearing that in the view of the Commissioner present this requirement was a reasonable one, and the temporary agreement entered into pending the decision of this case contained a provision to that effect. Subsequently the Commission was notified that the ship agents had waived this provision, and it was stated in their behalf upon the argument that the same was not now insisted upon. The subject is referred to here as a matter of some importance, upon which the opinion of the Commission should be expressed, in case this becomes a subject of contention in the future at Galveston or at other ports.

The second controversy arose over the furnishing of copies of the bills of lading issued by the carrier. The ship agents insisted that they should be at once provided with duplicate copies of all such bills of lading, and stated that in the past this had not been done by the carriers. It is our understanding that the temporary agreement provides that two copies shall be mailed to the ship agent at Galveston upon the day they are issued, and that this is a satisfactory arrangement. Certainly it is reasonable that in some way the ship agent shall be at once provided with a copy of whatever contract of shipment has been signed by the railway agent on his behalf.

We proceed now to inquire what relief should be granted the complainants upon the facts set forth.

Manifestly this Commission has no direct authority to require the issuing of a through export bill of lading, since it has no jurisdiction over the water carrier, which is a necessary party to that contract. This follows from our holding in the *Cosmopolitan case*, *supra*, and

is practically conceded by the complainants. But this must not be understood as meaning that the Commission may not act upon the rail carrier which is subject to its jurisdiction in a proper case where the ocean carrier stands ready to enter into these through arrangements upon reasonable terms.

The complainants do, however, contend that if a railroad issues through export bills via one port of export, it must do the same at all other ports served by it; that it can not issue such through bills through New Orleans and Port Arthur and Texas City while declining to do so through Galveston, without being guilty of an undue discrimination, in violation of the third section of the act.

Export cotton can move through all these ports. From most points in Texas the rate to Galveston is somewhat less than to New Orleans. From Oklahoma points and territory north of Texas generally the rate to both Galveston and New Orleans is the same.

We have seen that the through bill of lading is almost a necessity in the handling of this cotton, and it must follow that to grant such bills through one port, while refusing the same facility through another, would work a serious disadvantage to the latter port. We hold, therefore, that to decline to issue bills of lading through Galveston, while issuing them through other ports, would be an undue discrimination against Galveston, unless justified by difference in conditions at the different ports, which does not appear in this record.

The only order which the Commission could issue under this holding would be to require carriers to cease and desist from issuing export bills through one port, unless they were issued through all ports, and the only effect of this might be to deprive some port of the facility of through billing which it was enjoying. While this might be no valid reason against the making of such an order, it is a reason why we should proceed with caution and only upon a full understanding of the exact situation. Through export bills are now being issued via all these Gulf ports, and no order will be made for the future as to this matter. Should apparent occasion for an order arise in the future, the complainants may then move that such order be issued.

The record shows that no demurrage has been imposed at Texas City, Port Arthur, and New Orleans, while it has been imposed at Galveston. The second claim of the complainants is that to exact demurrage charges upon through billed export traffic at one port, while not doing so at other ports, is an unlawful discrimination against that port where the charges are assessed.

The defendants meet this claim of the complainants by the statement that demurrage is a matter for the terminal line; that they are the terminal lines at Galveston but not at Texas City, Port Arthur,

or New Orleans, and that therefore they can not control and should not be held responsible for demurrage regulations at these other ports.

Cotton moves, for the most part, from points in Texas through New Orleans and Texas ports upon joint rates to which those lines of railway which are defendants in this proceeding are parties. This Commission has held that all parties to a joint rate must stand responsible for the effect of that rate. *Indiana Steel & Wire Co. v. C., R. I. & P. Ry. Co.*, 16 I. C. C., 155; *Railroad Commission of Tennessee v. A. A. R. R. Co.*, 17 I. C. C., 418; *Black Horse Tobacco Co. v. I. C. R. R. Co.*, 17 I. C. C., 588. Cotton could not move from these points of origin to New Orleans without the consent of these defendant lines, and within just and reasonable limits this fact may be laid hold of to prevent discrimination between these different ports.

It is urged that conditions at New Orleans differ from those at Galveston, and such differing conditions have been pointed out in the testimony. Minor differences undoubtedly do exist. For example, the ship at Galveston takes her entire cargo at a single pier, while at New Orleans she frequently proceeds from point to point, receiving a portion of her cargo at each point. This may justify some difference in the demurrage rule or in the demurrage free time, but nothing pointed out at the hearing can altogether excuse the non-imposition of demurrage at New Orleans while imposing it at Galveston.

This is even more true of the other Texas ports like Texas City and Port Arthur. No serious claim was made that demurrage should not be imposed at these ports as well as at Galveston, and it is our understanding that such demurrage is being collected at present.

We realize that it requires time to reform improper conditions and are not disposed to require of these defendants what is practically impossible. We are, however, strongly persuaded that in the public interest demurrage should be charged at New Orleans and other ports of export as well as at Galveston upon their export business and that no substantial reason exists why this may not be done. We are of the opinion that after January 1, 1918, no justification can exist for not imposing substantially equivalent demurrage charges at New Orleans and Texas ports which are imposed at Galveston, and that it will be an undue discrimination not to do so.

The third claim of the complainants is that the free time which has been allowed at Galveston in the past is not sufficient, and this is perhaps the most important question before us.

It has been pointed out that the ship agent is the only party upon whom these demurrage charges can properly be made to rest, since he is the only party who is responsible for the movement of the cotton to and from the port. It is he who directs the time of shipment at the country station; it is he who arranges for the arrival of the

ship at Galveston; and since he undertakes to properly arrange these different factors in the through transportation, he should assume the risk of failure. But it must not be overlooked that in doing this difficulties are encountered which render it impossible to time the arrival of the cotton at the dock and the ship at the dock to a single day. He can not secure a delivery to the railway at the country station upon exactly the date when such delivery should be made. When once the railway has possession of the cotton the time which will intervene before it is delivered upon the dock at Galveston can not be definitely known, but may frequently vary by several days for the same haul. His ship often comes from long distances and the date of the arrival can not be foretold to an hour. All these things enter into the handling of this export traffic, and must in a measure, certainly in so far as they involve uncertainty in the operation of the railroad, be taken into account in determining what is a proper free time to be applied to the movement of this cotton.

The carriers assert that their storage facilities at Galveston are limited and that to extend the present free time would unduly congest their tracks. It appears, however, that the opportunity is available for an extension of these facilities. More piers may be constructed along the water front; ample land is at hand upon which to build additional tracks. Under these circumstances these defendant carriers must not impose an undue burden upon the ship agent, upon the plea that otherwise their facilities will prove insufficient. It is their business to provide at this port adequate terminal facilities and to furnish an adequate number of cars for the proper handling of this traffic.

The free time allowed on export cotton since 1907 has been and now is 5 days. The complainants insist that this should be enlarged to at least 10 days.

The case shows that the average detention of all cars loaded with export freight at Galveston from September 1, 1911, to March 31, 1912, was 4.18 days. The bulk of this business was undoubtedly cotton, the crop of 1911 being one of the largest ever marketed. The manner in which this business is conducted makes it inevitable that there should be a great difference in the expedition with which cars of export cotton can be discharged. If cars were unloaded with reasonable promptness an average time of over 4 days would indicate that the free time should justly be somewhat longer than 5 days, since there must have been in the nature of things a very considerable number of cases in which the unloading could not reasonably be done within the 5 days.

The only storage facilities provided for this cotton at Galveston are the sheds of the Galveston Wharf Company, which will not

afford storage much in excess of 250,000 bales. When it is remembered that from 2,000,000 to 2,500,000 bales of cotton move through the port of Galveston within a period of four or five months, it will be seen that the cotton must be handled largely from the car to the ship.

Not much assistance can be derived from previous decisions of the Commission upon this subject, since the matter of export demurrage has been seldom before us. At New Orleans 10 days' free time is allowed upon export lumber not moving on through bills of lading. This was attacked by the New Orleans Board of Trade as unreasonable, but the Commission approved the regulation. *New Orleans Board of Trade v. I. C. R. R. Co.*, 17 I. C. C., 496.

Coal is transported in large quantities to various ocean ports, like Norfolk, Baltimore, Philadelphia, and New York, for movement by vessel both coastwise and to foreign countries. A regulation imposing demurrage after 12 days' free time, with the right to an average agreement upon the basis of 5 days, was sustained as reasonable at the port of Baltimore. *Lynah & Read v. B. & O. R. R. Co.*, 18-I. C. C., 38.

The demurrage regulations now enforced by carriers at different ports upon export traffic have been examined. The free time in case of coal above referred to seems to be 15 days in New York Harbor, 12 days at Philadelphia, Baltimore, and Norfolk, with no limit whatever at Newport News.

Upon other export traffic held in cars at the port the free time runs all the way from 4 days to 30 days. A storage charge is frequently imposed upon export business contained either in sheds or cars awaiting export, the free time being usually 30 days.

No provision has been found in any tariff which expressly provides for demurrage in case of export business moving upon through bills of lading, and it fairly appears that demurrage is not ordinarily assessed against such traffic, although certain carriers claim that the effect of their tariffs is to impose demurrage, whether the traffic is moving upon local bills or through bills, and in some instances such demurrage charges have been collected from the ship which takes the traffic. The carrier declines to deliver the goods to the vessel, except upon an understanding that the demurrage shall be paid.

Much undoubtedly depends upon conditions at the various ports. In some instances the railroad has extensive storage facilities, while in others such facilities are controlled by the ship. It frequently happens that large quantities of export traffic originate at a single point and are sent in solid trainloads to connect with a particular sailing. In such instances the arrival and departure of the vessel

are so definitely known that the traffic reaches the port at the proper time and is promptly unloaded. It seems evident that what is reasonable under existing conditions at one port might be unreasonable at another.

The free time allowed at Galveston itself varies with the different commodities, being 120 hours on cotton, 240 hours on cottonseed and similar products, 120 hours on stone used in government construction, and 168 hours on other articles.

Upon a view of the whole situation we are of the opinion that at least 6 days' free time should be allowed.

Conditions at Galveston render it necessary to consider the manner in which this time shall be computed.

All the dock facilities at the port of Galveston are controlled either by the Galveston Wharf Company or, to some extent, by the Southern Pacific Company, through its terminal subsidiary. Sheds have been constructed upon the different piers by the Galveston Wharf Company, and perhaps by the Southern Pacific Company, in which cotton can be stored awaiting transshipment to the vessel. It has already been stated that the storage capacity so provided is only about 250,000 bales. These sheds are leased by the different ship agents, who thereby provide a means for unloading and caring for a certain amount of cotton if received at Galveston before the arrival of the vessel.

The wharf company insists upon unloading all this cotton, and under this rule the shipper can not, if he desires, unload the cotton from the car.

When a carload of cotton is received at Galveston it is placed upon a storage track belonging either to the railroad company or to the Galveston Wharf Company and the ship agent is notified of the arrival of the car. When his ship has arrived, or if there is room in his storage sheds, he orders this car forward, whereupon the railroad company or, as we understand the matter, the Galveston Wharf Company places the car for unloading and unloads it. It will be seen, therefore, that from the time the ship agent orders forward his car he has nothing to do with it, and can in no way control the movement of the car to his pier nor the unloading of the car upon the pier.

This circumstance has given rise to much contention and much confusion in the assessment of demurrage charges. It appears that carriers have applied what is termed "constructive demurrage." Just exactly what this was or just exactly how it was applied could not be stated either by the ship agent or the railway, nor even by the car-service agent. The ship agent vigorously insisted that he was in practice deprived of a portion of his 120 hours' free time.

It seems evident to us that the ship agent should not be made responsible for delay in the placing or the unloading of the car, and that a rule which may possibly make him answerable for such delay is fraught with injustice and with dispute. Some system should be adopted by which the car will be treated as unloaded when it is put into the hands of the railroad or the dock company for unloading, provided always that the opportunity to unload it upon the pier of the ship agent exists at the time the car is ordered forward. We think it would be reasonable to assume in the computation of time that when a car is ordered forward on or before 6 o'clock in the evening of a given day the time shall be computed as though the car were unloaded during that day, and in fixing the period of six days we have had the application of this rule in mind.

The free time begins running from 7 o'clock in the morning following the service of notice of the arrival of the car upon the consignee. If, now, the consignee before 6 o'clock in the evening of the sixth day orders the car placed for unloading, the car shall be treated as unloaded during the sixth day and no demurrage assessed against it, provided there is room upon the pier to unload it.

Coal intended for coastwise movement by water is usually dumped into the vessel by the railway. The Commission has held that when the vessel is at the dock the car will be treated as unloaded as of the day ordered to be dumped. *Peale, Peacock & Kerr v. C. R. R. Co. of N. J.*, 18 I. C. C., 25.

We also feel that the case presented is peculiarly one for the application of an average demurrage rule. Looking to the manner in which this business is handled, it must be apparent that in many cases cars can be unloaded in a single day, while at other times, owing to limited storage facilities, the cotton must remain in the car until the ship arrives. Under the present system there is no inducement upon the part of the ship agent to promptly unload his car; with an average demurrage rule in force, under which he has something to gain, the equipment would be invariably unloaded as promptly as possible and sent back into service.

The average detention during the cotton season of 1911 was 4.13 days. Some of this traffic was other than cotton, which was entitled to a longer free time than the cotton. It seems probable that 4 days would be an outside estimate for the average detention of carloads of cotton moving upon these export through bills, and we are of the opinion that a period of 4 days would be just as the basis of an average rule.

In the application of this rule, if the car was ordered forward before 6 o'clock in the evening of the first day, the shipper would ob-

tain a credit of 3 days, while if not ordered forward until 6 o'clock of the fifth day he would be charged a debit of 1 day. The average should be struck at the end of each calendar month.

Those ship agents who are parties to this proceeding insist that they are entitled to recover as reparation whatever demurrage they have paid within the period of two years previous to the filing of the complaint. They base this contention upon the ground that the assessing of demurrage against them at Galveston while it was not assessed at other Texas ports and at New Orleans is a discrimination for which they are entitled to recover damages.

Under our holding, no damages can be allowed upon that ground, for we have not found that up to the present time this discrimination has been undue and unlawful. While, generally speaking, demurrage on this export business should be imposed in substantially the same amount and upon substantially the same terms at all ports which compete for it, still there is no hard and fast rule of this kind. We have expressed the opinion that these defendants should be given until the 1st of next January in which to establish such demurrage regulations at New Orleans and Texas ports, and that they should not be held in default until after that period.

Whether the complainants are entitled to reparation in so far as the Commission has held six days to be a reasonable free time, whereas demurrage has been assessed upon the basis of five days, is a more difficult question, but should in our opinion be answered in the negative. These carriers established in good faith under the direction of the Texas commission, which was then supposed to have jurisdiction of this traffic, a demurrage period of five days. It does not follow that the enforcement of this regulation during the time it has been in effect is necessarily unreasonable because this Commission now reaches the conclusion, in view of the experience of the last three years, that the free time should be enlarged by one day. This Commission itself might very well have fixed the same time as that established by the Texas commission, but might have been convinced from the results of actual experience that the time should be somewhat enlarged. Under these circumstances, certainly, reparation could not be allowed. On the whole, we are unable to find that the free time allowed at Galveston up to the present has been unjust or unreasonable, and it therefore follows that the complainants have not been damaged.

To avoid all possible misconception, we desire to repeat that what is said in the foregoing opinion as to the issuing of through bills of lading, the assessment and collection of demurrage charges on export business, etc., refers entirely to cotton at the port of Galveston, except

25 I. C. O.

in so far as otherwise specified. Differing conditions might call for different treatment at other points, and as to other commodities.

No order will be made at present, but carriers will be expected to revise their demurrage rules at Galveston and other points in accordance with the conclusions above stated.

No. 3149.

CROMBIE & COMPANY ET AL

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted October 4, 1912. Decided November 11, 1912.

Upon reconsideration of all the evidence of record, the former decision in this case, 19 I. C. C., 561, reaffirmed and complaint dismissed.

Rufus B. Daniel for complainants.

H. A. Scandrett, E. W. Clapp, and H. C. Hallmark for Southern Pacific Company.

H. A. Scandrett and J. R. Christian for Galveston, Harrisburg & San Antonio Railroad Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are severally engaged in the wholesale fruit and produce business at El Paso, Tex. By petition, filed March 4, 1910, they alleged that during the period from March 7, 1908, to November 12, 1909, they made certain shipments of chili pepper, so called, in less-than-carload lots from Los Angeles, Tustin, and Anaheim, Cal., to El Paso, Tex.; that the class rate of \$2 per 100 pounds applied upon such shipments was excessive, unjust, and unreasonable; and that the shipments were overcharged, in that the rate which should have been applied was a commodity rate of \$1.25 per 100 pounds named in defendants' tariffs as applicable on "pepper (whole or ground) in packages" from California terminals and intermediate points to points in Texas, including El Paso.

A hearing was had upon the complaint October 10, 1910, and the Commission shortly thereafter made its report, 19 I. C. C., 561. At the former hearing the representatives of defendants temporarily waived proof of the shipments alleged to have been made and, for the purpose of placing directly before the Commission a disputed question of the application of the commodity rate involved, admitted that certain shipments had been moved and charged for at the rates alleged in the petition. It was further agreed that if the Commission should find that an overcharge existed, the amount of such overcharge would thereafter be determined.

As a consequence of this agreement no proof was made of any of the shipments alleged to have been made, and the facts in respect of such shipments are somewhat meager, since the question between the parties resolved itself into a controversy as to the peculiar character, uses, and scientific classification of what in local nomenclature is known as "chili" or "chili pepper." Considerable testimony was introduced on the one hand to show that the commodity is a spice or condiment used in seasoning, and on the other, that it is simply a vegetable used chiefly by the Mexican people for flavoring soups, stews, and other dishes, much as the common onion is used by other peoples whose taste is gratified by a less pungent seasoner.

The western classification, within the territorial jurisdiction of which the shipments moved, provided the following class ratings:

Class ratings under western classification.

	L. C. L.	C. L.
Groceries:	<i>Class.</i>	
Pepper, in bags, boxes, or casks.....	2	.....
Vegetables:		
Chili, ground, and chili powder, in boxes.....	2	.....
In natural state in boxes, bags, barrels, or crates.....	2	.....

The transcontinental tariff of eastbound class and commodity rates, to which the defendants were parties, contained the commodity rate on pepper which complainants allege should have been applied to their shipments. The item, which we reproduce, in so far as it is here material, reads as follows:

Articles.	From—	To—	Rates per 100 pounds.		
			Notes.	L. C. L.	C. L.
Pepper (whole or ground) in packages.	"California terminals" and "intermediate" points.	Points in Texas to which Missouri River "intermediate" rates are authorized to apply.	C.	\$1.25	.....

It is claimed, and there is no dispute upon the point, that the commodity rate quoted was applicable from the several points of origin of the shipments involved to El Paso.

The shipments actually made appear from the evidence to have been variously described as so many bales, or bags, of "chili pepper," "chili peppers," or "dried chili peppers." No specimen from any of the articles actually shipped was offered in evidence, but one of the complainants, from his stock of goods brought exhibits of articles which he denominated "*a* chili pepper" and "ground chili pepper." From the whole record it sufficiently appears that the article upon which complainants seek to have the commodity rate applied is a dried or evaporated vegetable pod, usually packed in bags or bales, which latter are themselves often compressed for handling. The commodity rate on pepper is not limited by specific terms of exclusion, but it is limited by inclusion to pepper which is "whole or ground." There can be no question as to what is meant by ground pepper, and we do not understand that whole pepper includes anything more than the unground berry or grain. The differentiation in the classification between pepper, thus considered as a spice, and chili considered and classed as a dried or desiccated vegetable seems to us a perfectly natural one. Certainly there is no evidence before us upon which we can condemn the distinction made in the classification. Even though the two articles are of the same vegetable family and have to a considerable extent similar natural properties and common uses, yet there is a very great difference in the form of preparation for shipment and the physical handling of the two commodities which the defendants argue constitutes a substantial difference from a transportation standpoint.

It will be noted that the classification provides a rating on pepper under the general heading "groceries," and on chili under the general heading "vegetables;" but nowhere does it provide any rating or make any reference to "chili pepper" or "chili peppers." The sole issue raised in the former proceeding was whether or not the commodity rate quoted was applicable upon the articles actually shipped. It was claimed by complainants that the commodity rate did apply and that therefore any amount exacted upon the basis of a higher rate was purely an overcharge. Little evidence was introduced bearing squarely upon the issue of reasonableness of the class rate as applied to chili.

The establishment of a commodity rate upon any article removes that commodity from the classification, but, as was said in the former report upon this case, a commodity rate is to be applied strictly; it can not be applied upon analogous articles, and it would seem to follow that only the article or articles clearly comprehended within the descriptive terms of the commodity rate

can be considered as having been so removed from the classification. Following this principle, and looking to the construction of the classification and the terms therein employed, and considering the properties of chili and the form in which these shipments were made, together with the terms in which the commodity rate was expressed, the Commission held that the commodity rate on "pepper (whole or ground)," was not applicable upon, and did not remove from the classification, the article therein described under the head of vegetables as "chili." Upon reconsideration of all the facts of record, recited more at length in this report, we are led to adhere to our former ruling.

There is some evidence in the record that the defendants have themselves misapplied the commodity rating referred to. There is also testimony to the effect that the Atchison, Topeka & Santa Fe, which company is not a defendant in this proceeding, but is a party to the same tariff, has applied the pepper rate on chili from California points to El Paso. If such are the facts, it is plain that such application was without tariff authority. We suggest that the defendants should, at the earliest opportunity, remove all doubt as to application of the tariff. An order will be entered dismissing the complaint.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 82.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF COTTONSEED PRODUCTS FROM OKLAHOMA CITY, OKLA., AND OTHER POINTS TO POINTS IN TEXAS AND OTHER INTERSTATE POINTS.

Submitted June 18, 1912. Decided November 12, 1912.

1. Proposed increased rates on cottonseed products from Oklahoma points to stations in Texas, and on inedible tallow from Oklahoma points to Louisville, Ky., Cincinnati, Ohio, and Hammond, Ind., not shown to be reasonable. Defendants directed to withdraw suspended supplement.
2. The proposed construction of rates on the group basis not condemned and defendants given permission to file new rates on this basis if short hauls are properly provided for.

George A. Henshaw for Oklahoma Corporation Commission.

J. L. West for Missouri, Kansas & Texas Railway Company of Texas, and Missouri, Kansas & Texas Railway Company.

J. G. Gamble for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and St. Paul & Kansas City Short Line Railroad Company.

F. R. Dalzell for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

F. E. Heafer for Pecos & Northern Texas Railway and Southern Kansas Railway of Texas.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Supplement No. 8 to F. A. Leland's tariff, I. C. C. No. 864, published to become effective March 2, 1912, increased the rates on cottonseed products from Oklahoma points to stations in Texas and, by order of February 27, 1912, was suspended by the Commission until June 29, 1912. On June 20 the supplement was re-suspended until December 28, 1912. By the cancellation of commodity rates on inedible tallow from Oklahoma points to Cincinnati, Ohio, Louisville, Ky., and Hammond, Ind., the same schedule also effects substantial increases in rates that will be considered farther on in this report.

While a number of reductions in rates on cottonseed products would have been caused by this issue, by far the greater changes were advances ranging from 1 to 14 or 15 cents per 100 pounds, and resulting, in some instances, in increases of 100 per cent or more. Prior to the publication of this supplement the Chicago, Rock Island & Pacific Railway Company, which has 19 oil mills on its rails in Oklahoma, had in effect rates on cottonseed meal, cake, and hulls to only 47 Texas points, and on cottonseed hulls only, to 73 destinations in Texas. The method of publication was a specific commodity basis to certain points and a mileage basis to others. To provide rates to practically all Texas destinations and to obviate the difficulties incident to the publication of straight mileage scales—their inapplication at competitive or common points and the confusion attendant upon their use in the construction of rates for joint line movements—the points of origin in Oklahoma and destinations in Texas were divided into groups, Oklahoma into 9, comprising about half of the state, and Texas into 13, embracing practically Texas common point territory. The rates between these groups were intended to be made on the following mileage basis, using the distances between representative points in the particular groups:

Distances.	Cotton- seed meal and cake.	Cotton- seed hulls.	Distances.	Cotton- seed meal and cake.	Cotton- seed hulls.
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
20.....	5½	5	200.....	18	10
30.....	7	5	220.....	18	10
40.....	7½	5	240.....	18	10
50.....	8	5	260.....	19	11½
60.....	8½	5½	280.....	20	12½
70.....	9	6	300.....	21	13
80.....	9	6	320.....	22	13
90.....	10	6½	340.....	23	13
100.....	10	6½	360.....	24	14½
120.....	11	7	380.....	25	14½
140.....	12	7½	400.....	25	16
160.....	13	8	420.....	25	16
180.....	14	8½	440.....	25	16
200.....	14	9	460.....	25	16
220.....	14½	9½	480.....	25	16
240.....	15	10	500.....	25	16
			520.....	25	16
			540.....	25	16
			560.....	25	16
			580.....	25	16
			600.....	25	16
			Over 600.....	25	17½
					19
					21

This mileage scale, except in one or two instances where it is lower, is practically identical with that heretofore in effect between Oklahoma and Texas points and, for distances up to 280 miles, is the same as prescribed by the Railroad Commission of Texas for application between points in that state. Against this scale as heretofore applied no complaint has been made, but the rates actually proposed between the newly made groups by no means entirely conform to the basis indicated; indeed, their repeated variance therefrom indicates at least a lack of care in compilation. Under this scale the maximum to be observed was 25 cents on meal and cake and

21 cents on hulls to common-point territory, while rates of 26 and 27 cents on meal and cake and 22 cents on hulls are published between numerous groups. The Rock Island Company assumed the burden of defense, the other carriers stating their positions to be substantially analogous.

* The chief cause for complaint is the proposed publication of group rates from Oklahoma mills near the Texas state line to destinations in northern Texas; that is, the application of group rates to short hauls. The lowest group rates under the proposed arrangement are 13 cents on meal and cake and $8\frac{1}{2}$ cents on hulls, equivalent to the present rates for 160 miles, while the distance between these near-by points is frequently less than one-fourth that, and the old rates were as low as $5\frac{1}{2}$ cents on meal and cake and 5 cents on hulls. Defendants admit that there is no justification for such an increase and that reasonable rates can not be accorded this traffic under the proposed grouping. They therefore propose specifically to publish between such points commodity rates equivalent to the present mileage rates. The existing specific commodity rates to points on the Chicago, Rock Island & Pacific Railway (Mexico division) and to stations on the Fort Worth & Denver City Railway, the Rock Island asserts, were not intended to be canceled and will be retained. The proposed rates to Chicago, Rock Island & Pacific stations (Amarillo division) are somewhat lower than the existing rates and will be substituted therefor. To the remaining points it proposes, under the grouping system, to more accurately apply the mileage scale heretofore in effect. The other defendants expressed their intention of making similar restorations when permitted to file new tariffs. If this be done most of the existing rates will be continued, a number reduced, and commodity rates published to several thousand additional Texas destinations. The carriers strongly contend that there was no intention to increase any of the rates except as slight advances might occasionally be incident to the extension of the rates under the new method of publication, and that these would be largely offset by corresponding reductions. Had defendants correctly applied the mileage scale in the construction of their group rates, and had the short hauls been taken care of either in additional groups or on a straight mileage basis, there might have been no complaint. While the Oklahoma shippers can not expect to enter far into the Texas markets because the Texas shippers are located nearer the points of consumption, it is certainly of some advantage to them to have specific rates to nearly 3,000 additional Texas destinations. In their protestations to the Commission urging suspension of the proposed increased rates they complained that both the Oklahoma and the Texas groups were too extensive and that even the old rates were unreasonable. The

latter complaint was not further urged at the hearing; the former was referred to, but we were given the benefit of no testimony that would justify a delimitation of the area covered by the respective groups, assuming that the short hauls will be provided for. The protestants were at first under the impression that Oklahoma had been divided into 4 groups and Texas into 6, but the fact is that 9 groups were made of about half the state of Oklahoma and 18 groups of about the same portion of the state of Texas. No finding upon these allegations can now be made.

There is much to commend in the principle sought to be established by the proposed supplement and much to condemn in the manner of its application. As to most of the increases over the comparatively few existing rates, defendants admit the unreasonableness of the advance, which they attribute to inadvertence. Our opinion is that the proposed increased rates are not shown to be reasonable, and we shall require defendants to withdraw the supplement now under suspension. This schedule, however, names rates to more than 2,000 points not heretofore covered; and we must not be understood as saying that such rates should not be republished, provided they do not exceed the mileage basis to which reference has heretofore been made, the mileage to be computed between representative points in the respective groups. As the rates proposed at the hearing appear to be practically the rates now in effect, and in some instances slightly lower, their reasonableness may be deemed admitted by defendants and not disproved by protestants. Their establishment will be permitted without prejudice to specific attack aside from this proceeding.

Defendants have heretofore carried specific commodity rates on inedible tallow from Oklahoma points to Cincinnati, Ohio, Louisville, Ky., and Hammond, Ind.; but by supplement No. 8, now under suspension, it is proposed to withdraw these rates, leaving class rates to apply. The result is an advance from 31 cents to 36 cents to Cincinnati, 28 cents to 36 cents to Louisville, and 31 cents to 72 cents to Hammond. Defendants appeared unaware of the range of these advances, and the only explanation offered was that the advance to Hammond doubtless was due to the divisions demanded by the lines beyond East St. Louis, Ill. They frankly admitted that an advance of 41 cents in the rate to Hammond could be attributed only to mistake, as no such increase could have been contemplated. By letter written to the Commission after the hearing the representative of the Rock Island Company stated that no through class rates were in effect between Oklahoma and Cincinnati, Louisville, and Hammond; that the lowest combination on East St. Louis made a rate of 40½ cents to Hammond; and that the application of such combination had been specifically provided for in another issue. We find, however, that

from Oklahoma City to Hammond the Oklahoma City-to-Chicago fifth-class rate of 68 cents would apply. We further find that the application of the combination on East St. Louis is limited to inedible tallow from Texas points. The 68-cent class rate from Oklahoma City to Hammond exceeds the 40½-cent East St. Louis combination, as well as a 32½-cent rate which could be constructed on Chicago. We find that defendants have not shown the increased rates on inedible tallow to be reasonable, and they will be expected to withdraw the proposed cancellation of the rates now in effect.

Under the circumstances no order will now be made, but defendants should promptly withdraw the suspended supplement and re-issue rates in line with the views herein expressed.

No. 4734.

NORTH FORK CANNEL COAL COMPANY
v.
ANN ARBOR RAILROAD COMPANY ET AL.

Submitted July 27, 1912. Decided November 12, 1912.

1. No unjust discrimination against Redwine, Ky., found to result from the application of lower rates on bituminous than on cannel coal from the Chesapeake & Ohio Kanawha district in Kentucky to central freight association points.
2. The fact that rates on cannel coal from Redwine, Ky., to central freight association points were made the same as the rates from Cannel City, Ky., a station on the line of none of the defendants, there being no showing that the Cannel City rates are reasonable, explains the existence but does not necessarily justify the continuance of the present Redwine rates.
3. Rates on cannel coal from Redwine, Ky., to certain points in central freight association territory found to have been and to be unreasonable and unjustly discriminatory to the extent that they exceeded and exceed by more than 40 cents per ton the rates on cannel coal from the Kanawha district.
4. Reparation to be awarded on proof of damage to complainant.

Hines & Norman for complainant.

W. S. Bronson for Chesapeake & Ohio Railway Company.

H. M. Griggs for New York Central lines.

James Clay for Morehead & North Fork Railroad Company.

William W. Crawford for Pennsylvania lines.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Complainant is a cannel-coal operator at Redwine, Ky., a local station on the Morehead & North Fork Railway, 23 miles south of Morehead, Ky., the junction of the Morehead & North Fork and the Lexington division of the Chesapeake & Ohio Railway. No rates on bituminous coal are published from Redwine, as no coal of that character is there mined. From its Kanawha district mines in Kentucky the Chesapeake & Ohio Railway Company maintains rates on both bituminous and cannel coal, the difference being from 15 to 20 cents per ton in favor of the former. To certain points in central freight association territory the Redwine cannel rates are from 5 cents to \$1.15 more than the Kanawha cannel rates. It is alleged that this is both unreasonable and unjustly discriminatory; that a higher rate for the transportation of cannel than for bituminous coal discriminates against the former commodity; and that the rates from Redwine should not exceed the Chesapeake & Ohio Kanawha district bituminous rates by more than a reasonable differential, which in complainant's opinion should be 20 cents. In short, complainant asks us to establish from Redwine to certain central freight association points rates on cannel coal 20 cents per ton higher than now obtain on bituminous coal from the Kanawha field.

Cannel is a higher grade coal than bituminous and is used almost exclusively for domestic purposes. Its only competitor from the bituminous field is the screened lump of superior quality, and even this commands about 50 cents per ton less. Cannel mines are also to be found in the Pennsylvania Connellsville region, in West Virginia on the Coal & Coke Railway, in the Kentucky Kanawha district, and at Cannel City, about 20 miles south of Redwine, on the Ohio & Kentucky Railroad. The production in the Kanawha district is negligible and occasions the complainant no concern; nor does the Cannel City production, which, while substantial, appears to find a market in and around Kentucky, in which territory Redwine does not sell. Complainant's principal competitors are the Connellsville and the Coal & Coke cannel, and the high-grade Kanawha bituminous, which move to these particular central freight association markets upon rates from 5 cents to \$1.30 per ton lower than Redwine cannel coal. The rates upon Connellsville and West Virginia cannel, however, can not be used to predicate a finding of unjust discrimination against Redwine and in favor of the Kanawha bituminous fields. To determine whether the alleged discrimination exists we must consider the Redwine and Kanawha rates without reference to the Connellsville and West Virginia rates. The record also presents the issue of relative reasonableness which will have consideration.

Prior to 1908 the only cannal coal mines in this portion of Kentucky were at Cannel City. Coal from these mines finds its way to central freight association markets over the Ohio & Kentucky Railroad, Lexington & Eastern Railroad, and the Louisville & Nashville Railroad through Cincinnati. Most of it seems to be sold at near-by Kentucky, Ohio, and Illinois points. In 1908 the Redwine mines were opened, and upon complainant's representation that its chief competitor was Cannel City the Chesapeake & Ohio published from Redwine the Cannel City rates. That is the basis applicable to-day, and, with the same freight rates to an equally accessible territory, complainant's failure to sell in the near-by markets must be due either to a difference in the quality of the coal, the cost of operating, or the aggressiveness of the respective selling forces, disadvantages which can be removed only by the complainant. However, one of the allegations of discrimination is now predicated upon the lower rates on bituminous coal from the Chesapeake & Ohio mines in the Kanawha district. The mines referred to are located on the Big Sandy division of the Chesapeake & Ohio extending southward through the eastern part of Kentucky from Big Sandy Junction, near Ashland, Ky., almost to the Virginia state line. From Ashland the Lexington division of the Chesapeake & Ohio takes a south and west course to Lexington, the Morehead & North Fork joining it at Morehead, approximately midway. Such mines as are located on either of these divisions or branches are included in defendant Chesapeake & Ohio's groups 4 and 5, which groups, along with Nos. 2 and 3, take the same rates. Farther east in West Virginia is defendant's New River district, from which group 1 rates apply. These New River or group 1 bituminous rates, because of pronounced competitive conditions, are made the same as the Connellsville, Pa., rates. The Kanawha, or groups 2, 3, 4 and 5, rates are the Pittsburgh rates and are lower by 15 or 20 cents than the New River rates. In making its rates on cannal coal the Chesapeake & Ohio was unwilling to apply its bituminous rates, but because of the production of cannal coal at Connellsville the Connellsville cannal coal rates were applied from the Kanawha field. At Connellsville, however, no distinction is made by the Pennsylvania Railroad between cannal and bituminous coal. By giving New River the Connellsville bituminous rate and Kanawha the Pittsburgh bituminous and the Connellsville cannal rate, and the Connellsville cannal and bituminous rates being the same, the practical effect is the application of New River bituminous rates to the Kanawha cannal coal and the existence of a difference of 15 or 20 cents at Kanawha in favor of bituminous coal. It is this difference that complainant alleges unjustly discriminates against cannal coal. This coal, however, sells for about \$2 per ton f. o. b. mines when the best Kanawha

lump bituminous sells for \$1.50. In addition the trade requires that it be transported in box cars. The minimum applicable is 20 tons, and the actual loading never exceeds 28 tons. The average loading of a bituminous coal car is from 40 to 45 tons. There is a suggestion that the use of box cars makes for a lower operating cost because of the comparative absence of empty mileage, but we have no data to determine the extent of this saving, if any exist. Again, cannel coal is susceptible to only limited use; its markets must be numerous, though their individual demands are light. The output of complainant's mines during the past three years has averaged only 12,000 tons per year, but it claims that with reasonable freight rates this tonnage would be increased to from 50,000 to 100,000 tons. Solid trains of cannel appear to be unknown, while such a movement is the rule rather than the exception from the bituminous fields. In the case of *Goff-Kirby Coal Co. v. B. & L. E. R. R. Co.*, 13 I. C. C., 383, we said that cannel coal properly might take a higher rate than bituminous, but in the absence of cannel coal rates defendants would have to apply their bituminous rates. This case is cited by both complainant and defendant, but we see in it nothing to persuade us that on this record cannel and bituminous coal should take the same rates; in fact, that case is largely controlling on the propriety of higher rates on cannel than on bituminous coal. Under the facts before us we can find no unjust discrimination to result from the existence of lower rates on bituminous than on cannel coal from the Kanawha fields.

To a number of points in Kentucky, Indiana, Illinois, Ohio, and Missouri the Redwine rates are about the same as the Kanawha cannel rates, varying from slightly less to 20 or 25 cents more; but complainant declares it is not concerned with these rates, because, for some reason, it is unable to sell its coal in those markets. To other points, particularly in northeastern Ohio, Indiana, Wisconsin, Illinois, Missouri, and Michigan, the Redwine rates exceed the Kanawha cannel rates by from 40 cents to \$1.15. This difference, the Chesapeake & Ohio explains, is due to the fact that the Redwine rates are the same as the Cannel City rates, and are made with no relation whatever to the Kanawha rates. To accept this as a complete justification of the Redwine rates would necessitate the assumption that the Cannel City rates are reasonable; but as there is not sufficient basis for that premise, this history may explain but does not necessarily justify them.

To all the destinations to which lower rates are sought the route beyond Cincinnati, Ohio, is common to traffic from Cannel City, Redwine, or the Kanawha district. The Chesapeake & Ohio publishes rates from mines on its Lexington division near Morehead, although

no coal rates are in effect from Morehead, as no mines are there operated. Coal from Redwine moves 28 miles over the Morehead & North Fork, thence over the Chesapeake & Ohio's Lexington division through Cincinnati. To that point, regardless of destinations, the Morehead & North Fork and the Chesapeake & Ohio receive \$1.10 per ton, which is divided 40 and 70 cents, respectively. The only exception is the rate to Toledo, which divides 90 cents to Cincinnati, the Morehead & North Fork receiving 30 cents and the Chesapeake & Ohio 60 cents. It appears that the division received by the carriers north of Cincinnati out of the Redwine rate is the same as they receive out of the Cannel City rates. What they receive out of the Kanawha rates for the same service we are not advised. In instances where the Redwine rates are \$1.15 in excess of the Kanawha rates the division of \$1.10 to the southern carriers gives to the northern lines on coal from Redwine the equivalent of the full Kanawha rate plus 5 cents. This would indicate that much of the difference between the Redwine and the Kanawha rates goes to the roads north of Cincinnati, while practically all of the transportation difference exists south of that point. The chief difference between the transportation of cannel coal from Redwine and of bituminous coal from Kanawha is the single car, as compared with the train-load movement, but the same is not true as to the transportation of cannel coal from both places. The record contains the statement that the Kanawha cannel movement is almost negligible, and while we have no figures upon the actual tonnage it is fair to assume that it is little, if any, heavier than from Redwine. It may be that this cannel coal could be hauled in the heavy bituminous trains, but there is equal reason to believe that the Redwine cannel can be and possibly is assembled with like trains when it reaches the main line. Of course, material expense is entailed in getting the coal to Morehead, for the Morehead & North Fork owns no box cars, but must obtain them from the Chesapeake & Ohio. This frequently necessitates a 23-mile empty haul to complainant's mines in addition to the expense incident to car rental. Furthermore, the present tractive power, light rails, and heavy grades on this road fix the maximum trainload at five cars. Complainant avers that its average load is 28 tons, but even this at the 40-cent division yields a per-car revenue of only \$11.20, or a per-train revenue of \$56 for a loaded haul of 23 miles, an empty haul of the same distance, and a switching service at the mines. At a 20-cent division the revenue for the same service would be only \$5.60 per car, or \$28 per train.

All the reasons, however, that might indicate a higher operating cost from Redwine than from Kanawha apply mainly to the haul south of Cincinnati, for which the carriers concerned receive, uni-

formly, \$1.10. It is urged that the Kanawha rates are competitive and should not be compared with the Redwine rates. What is said of Kanawha rates, however, is true of practically all coal rates. The competition referred to is occasioned by coal from different mines seeking the same markets, and in this particular Redwine can not be excepted. We can see no justification for the remarkable difference in rates beyond Cincinnati, and, accepting the Kanawha canal rates as properly comparable, we are of opinion that to the extent they exceeded or exceed the Kanawha canal rates by more than 40 cents per ton the Redwine rates were and are unreasonable and unjustly discriminatory. Rates not in excess of that basis will be prescribed for the future. This will necessitate the publication of rates to some points to which no rates are now applicable from Redwine, and to which complainant has asked that reasonable rates be prescribed. The rates to near-by central freight association points which are now lower than the Kanawha rates are not in issue, and nothing here said should be taken as approving any change therein. Upon satisfactory proof of damage to complainant upon shipments actually made within the statutory period under the rates herein found to have been unreasonable and unjustly discriminatory, reparation will be awarded.

An order in accordance with this finding will be issued.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 141.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF POTATOES IN CARLOADS FROM POINTS IN SOUTH DAKOTA, NEBRASKA, AND OTHER STATES TO ST. LOUIS, MO., PEORIA, ILL., CHICAGO, ILL., AND OTHER POINTS.

Submitted October 3, 1912. Decided November 27, 1912.

Proposed rates herein on potatoes found unreasonable; present rates declared reasonable and prescribed for the future.

C. C. Wright and F. P. Eyman for Chicago & North Western Railway Company.

R. B. Scott, George H. Crosby, and G. P. Lyman for Chicago, Burlington & Quincy Railroad Company.

W. F. Dickinson and R. G. Brown for Chicago, Rock Island & Pacific Railway Company.

H. A. Scandrett for Union Pacific Railroad Company.

George Rice, F. C. Robinson, P. W. Dougherty, and E. F. Swartz for South Dakota Railroad Commission.

H. J. Winnett and U. G. Powell for Nebraska Railroad Commission.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The rates involved in this investigation are those upon potatoes from points of production in South Dakota, western Nebraska, Colorado, and similar territory to the Mississippi River and points east. The advances range from $\frac{1}{4}$ to 8 cents per 100 pounds.

The reason given by the carriers as a justification for the advance was that these eastbound rates were lower than corresponding westbound rates and were being suggested as the foundation for a demand that the westbound rates be reduced. It was further said that the rates were extravagantly low and had been made with a view to moving a part of the potato crop grown in the originating territory, but that in point of fact no traffic moved under them.

It appeared that the eastbound rates were lower than the westbound rates by substantially the amount of the advance. One witness

also testified that complaint had been made because his company did not maintain as low a rate on this commodity west as in the reverse direction, but it did not appear that any demand had been made for a reduction of the westbound rates nor that there was any considerable movement of potatoes in ordinary years in that direction.

The rates now in effect are through rates from points of origin to the Mississippi River and points east, like Chicago, and are less than the combination upon the Missouri River. The proposed rates were said to be in all cases equal to the combination of the rate in effect from the Missouri River to the east with the local rate up to that river, which is sometimes a rate established by state authority and sometimes the voluntary rate of the carriers. While we have not heretofore, and do not now, hold that transportation charges may not often with propriety be constructed by a combination of intermediate rates, we have said that ordinarily a through rate like this should be less than such combination.

The carriers show that for the last three years there has been but very little movement of potatoes from the territory of production in question to the Mississippi River and points east, the product of that region having been mainly consumed in territory to the west of that river. We should not ordinarily require a maintenance of these rates if in point of fact no traffic was likely to move under them, but this can hardly be affirmed in the present instance. The territory from which these rates apply produces large quantities of potatoes. Whether they will or will not move east of the Mississippi River depends entirely upon the production of different parts of the country. The state of the crop may be such that they will move in large quantities one season and possibly not at all for several succeeding seasons.

The carriers insist that the present rates are extremely low, but to this again we are not prepared to assent.

We have before us a statement showing every rate in issue and the rate per ton-mile. It appears from an inspection of these rates that the revenue per ton-mile earned under the present rates, taking Chicago as an illustrative destination, runs approximately from 7 mills to 10 mills for distances of from 500 to 950 miles, which under the conditions of movement can not be regarded as unusually low.

Upon the whole, the carriers have not satisfied us that the advances are proper. We are of opinion that the proposed rates are unreasonable; that the present rates are just and reasonable and ought not to be exceeded for the future. An order to this effect will be issued.

25 I. C. C.

No. 4236.
COFFINS BOX & LUMBER COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted April 26, 1912. Decided November 11, 1912.

Rate of 42 cents per 100 pounds for the transportation of wooden beer-bottle carriers in carloads from Minneapolis, Minn., to Des Moines, Iowa, found to have been unreasonable to the extent it exceeded a rate of 18½ cents. Reparation awarded.

Frank A. Larish for complainant.
W. D. Burr for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of boxes, barrels, and baskets, with its principal place of business at Minneapolis, Minn. By petition, filed July 11, 1911, it alleges that the rate charged by defendants for the transportation of 7 carloads of empty wooden beer-bottle carriers, or new beer cases, from Minneapolis, Minn., to Des Moines, Iowa, was unjust and unreasonable. Reparation is sought. The claim was first filed with the Commission February 16, 1911.

At the time of shipment the western classification provided third-class rating, minimum weight 18,000 pounds, on wooden beer-bottle carriers, and second-class rating, minimum 12,000 pounds, on empty wooden boxes, set up. The second-class rate from Minneapolis to Des Moines was 52½ cents. On six of the shipments, moving between February 25, 1909, and August 21, 1909, charges were collected on the basis of the third-class rate of 42 cents per 100 pounds. On the remaining shipment, weighing 28,200 pounds and moving April 9, 1909, charges in the sum of \$112.80 were collected, based, apparently through a mistake, on a rate of 40 cents.

On April 15, 1909, defendant established a commodity rate of 18½ cents, minimum 30,000 pounds, on wooden boxes, set up, and on October 15, 1909, this rate was extended to wooden beer-bottle carriers, and the minimum weight on both commodities made 20,000

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pounds. Complainant contends that the commodity rate of 18½ cents on wooden boxes should have applied on the shipments in question; also that the rate charged was unjust and in violation of sections 1 and 3 of the act. It is clear that the beer-bottle carriers were not covered by the commodity rate and that therefore the 42-cent rate was properly applicable. There is accordingly an undercharge of \$5.64 on the shipment of April 9.

It appears from the testimony of complainant's witness that it manufactures wooden beer-bottle carriers, also empty wooden boxes, of various kinds and dimensions. The bottle carriers and certain wooden boxes manufactured by complainant are ordinarily made from the same grade of lumber. The cost depends on the number of feet of lumber used. The bottle carrier costs a little more than a box of the same dimensions, because the former is fitted with a rack for holding the bottles. The boxes have tops, but these tops are usually shipped in bundles, while the top or cover of the bottle carrier is fitted with a hinge and clasp. There is no material physical difference between the bottle carrier and the box of similar dimensions, except that the cover of the latter is shipped separately. It is possible, therefore, that different sizes of boxes might be nested to some extent, thus saving space, while this could not be done with the bottle carriers. However, the rates, so far as the record shows, were not in any degree predicated upon this difference.

The voluntary reduction of a rate does not of itself prove that the prior higher rate was unreasonable. On the other hand, there appears to be, from a transportation standpoint, no substantial difference between the empty wooden box and the beer-bottle carrier of corresponding dimensions. They occupy substantially the same amount of cubic space in the car and involve to the carrier about the same transportation risk and cost of service.

Upon the facts of record we are of the opinion and find that the rate charged was unreasonable to the extent that it exceeded the rate contemporaneously in effect on empty wooden boxes, subject to a minimum weight of 20,000 pounds in carloads and to rule 6-B of the western classification.

The original complaint in this case covered seven cars. Three of these moved prior to the establishment of the commodity rate on boxes and are therefore not covered by the basis of the award of reparation. At the hearing complainant submitted documents covering three shipments which had not been included in the original complaint. Complaint of the charges upon these latter shipments having been made more than two years subsequent to the delivery of the shipments, they are barred by the statute of limitations. The mate-

rial details of the remaining four shipments upon which the complainant, under our findings as above expressed, is entitled to reparation are as follows:

Date.	Car.	Weight.	Rate.	Charges	Charges which would have accrued based on 20,000 pounds minimum and rate of 18½ cents.
		<i>Pounds.</i>	<i>Cents.</i>		
June 5, 1909.....	5,098	26,900	42	\$108.78	\$47.92
June 18, 1909.....	3,519	28,200	42	118.44	52.17
July 8, 1909.....	27,072	20,180	42	84.67	37.80
August 7, 1909.....	7,784	26,600	42	111.72	49.21
Total.....		100,880	.....	423.61	186.60

We further find that complainant made the shipments recited in the foregoing statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$237.01, with interest thereon at the rate of 6 per cent per annum from the 1st day of September, 1909.

As the rate found reasonable has been in effect for more than two years, no requirement for the future is necessary.

An order will be entered in accordance with the foregoing.

25 I. C. C.

No. 4648.
CAHILL IRON WORKS
v.
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY
ET AL.

No. 4648 (Sub-No. 1).
SAME

v.
SOUTHERN RAILWAY COMPANY ET AL.

Submitted June 13, 1912. Decided November 11, 1912.

Rate of \$2.20 per 100 pounds for the transportation of cast-iron, porcelain-lined, combination sink-and-laundry tubs, from Chattanooga, Tenn., to San Francisco, Cal., when shipped in mixed carloads with sinks, found unreasonable. Reasonable rate prescribed and reparation awarded.

Campbell & Coffey for complainant.

L. T. Wilcox, W. F. Herrin, Baker, Botts, Parker & Garwood and H. A. Scandrett for Southern Pacific Company and Galveston, Harrisburg & San Antonio Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation with principal office at Chattanooga, Tenn., is engaged in the manufacture, sale, and shipping of plumbers' porcelain-enameled cast-iron ware, including sinks, laundry tubs, etc. The petition in case No. 4648, filed January 26, 1912, attacks as unreasonable the charges exacted by the Nashville, Chattanooga & St. Louis Railway and connections for the transportation of 12,750 pounds of an article designated by the shipper as sinks but rated by the carriers as stationary wash or laundry tubs, which was shipped in the same car with 29,627 pounds of kitchen sinks. The car moved July 22, 1911, and contained, in addition to the kitchen sinks and the disputed article, 156 pounds of washstands, on which the less-than-carload rate was charged. At destination charges were assessed on the kitchen sinks on basis of the carload commodity rate of \$1.27 per 100 pounds, while on the disputed article charges were collected on basis of a commodity rate of \$2.20 applicable, in less than carloads, to various articles, including stationary wash or laundry tubs.

The petition in Sub-No. 1, also filed January 26, 1912, raises the same issues with respect to a shipment moving March 17, 1911, via the Southern Railway and the same connections, which contained 27,759 pounds of sinks and 8,170 pounds of the disputed article, in addition to several less-than-carload lots of other articles as to which there is no disagreement. The issue involved is the question of the application to this article of the commodity rate on sinks.

The record clearly establishes that the article concerning which the question of application of the commodity rate arises is a combination of sink and laundry tub, cast in one piece, and differentiated from a sink by the fact that the tub end of the combination article is depressed 14 inches, while the sink end is depressed but 7 inches. Wash tubs are ordinarily 14 inches in depth, and although two sections are sometimes cast in one piece, they are usually manufactured in single units, and where two or more tubs are wanted two or more units are sold and bolted together. It appears that for six years the combination article has been shipped from Chattanooga to the Pacific coast as a sink and with sinks in carloads at the sink rate, the present shipments being the first upon which any question has been raised as to the rate applicable. The combination article has never been shipped in straight carloads.

Under the official classification, wash or laundry tubs and sinks in carloads take the same rating, and this rating, fifth class, applies to practically all enameled or plain plumbers' supplies, including urinals, lavatories, washstands, and basins. The southern classification places laundry tubs in carloads in third class, while sinks, lavatories, washstands, and other plumbers' articles are in fourth class. In western classification sinks in carloads are fifth class, while laundry tubs, bath tubs, washstands, and numerous other articles take fourth class, and certain mixtures are permitted.

Commodity rates in carloads and less than carloads obtain from Chattanooga and other points to the Pacific coast, under which corresponding differences are made between sinks and laundry tubs, washstands, etc., but, as heretofore stated, there is not now, nor was there at the time of these movements, any classification rating or commodity rate, carload or less than carload, for a combination sink and laundry tub.

Transcontinental tariff, I. C. C. No. 916, naming \$1.27 per 100 pounds on sinks in carloads; \$1.80 on sinks in less than carloads; and \$2.20 on washtubs in less than carloads, contains the following rule:

Any package containing articles of more than one class will be charged at the rate for the highest-classed article contained therein.

Upon the theory that the article here in dispute consisted of two distinct articles in one package, the carriers assessed the rate for
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the highest classed article, i. e., \$2.20. The commodity rate on washtubs in carloads at the time of the movements was \$1.60, and the Southern Pacific Company and Galveston, Harrisburg & San Antonio Railway Company, in answers and at the hearing, proposed the establishment of a rate of \$1.40 to apply on combination sink and washtubs in straight carloads or when mixed with sinks. This would afford a rate 20 cents less than the rate on washtubs and 13 cents higher than the rate on sinks.

It seems clear upon the record that the disputed article is neither a sink nor a washtub but a combination of both which is placed in the kitchen and designed for both culinary and laundry purposes. That it is, when shipped in straight carload lots, or when mixed with carloads of sinks, entitled to a lower rate than the rate applied to shipments of straight carloads of laundry tubs, seems fairly clear. The value of the combination article does not differ materially from the average values of articles transported under the various commodity rates applied to plumbers' supplies, including sinks and laundry tubs, and the conditions of packing and loading are substantially the same. There is no attack in this proceeding upon the existing classification of sinks or laundry or washtubs, nor is the reasonableness of the existing commodity rates on these articles challenged.

We find that a just and reasonable rate for the transportation from Chattanooga to San Francisco, Cal., of combination sink and laundry tubs, of the character here under discussion, when mixed with carloads of sinks, should not exceed \$1.40 per 100 pounds, and that the rate charged upon the shipments involved was unjust and unreasonable to the extent that it exceeded such a rate.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the combination sinks and tubs been transported with the sinks as a mixed carload, and had the rate above found reasonable for such mixed carload shipments applied; and that it is, therefore, entitled to an award of reparation in the sum of \$92.73, with interest from August 16, 1911. An order will be entered accordingly.

25 I. C. C.

Nos. 3234 and 3752.
UNITED STATES
v.
SOUTHERN PACIFIC COMPANY.

Submitted July 17, 1911. Decided November 11, 1912.

1. Rates charged by defendant for the movement of horses and mules in carloads from Huachuca, Ariz., to Los Angeles and Atascadero, Cal., found to have been unreasonable to the extent that they exceeded \$125 and \$160 per car, respectively. Reparation awarded.
2. The charges for the movement of horses and mules in carloads from Huachuca, Ariz., to San Francisco, Cal., under a special contract entered into on behalf of the government and the carrier, not found to have been unreasonable.

Lewis W. Call, Isaac N. Fluckey and E. W. Moore for complainant.

F. C. Dillard, C. H. Bates, George F. Squires, and H. A. Scandrett for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The issues involved in these two cases are similar; they were consolidated at the hearing, and will be considered together in this report. The complainant, in its petitions, filed April 13 and December 28, 1910, alleges that unreasonable rates were charged by defendant for the transportation of horses and mules from Huachuca, Ariz., to points in California during September and December, 1908. Reparation is asked.

In No. 3234 there are two separate shipments involved. One shipment was of 11 carloads of cavalry horses and mules from Huachuca, Ariz., to Los Angeles, Cal., which moved on September 12, 1908, and the other was a carload shipment of cavalry horses from the same point of origin to Atascadero, Cal., which moved September 19, 1908. On both shipments the bills of lading called for "tariff rates," and charges were collected on basis of the minimum of 20,000 pounds for a 30-foot car, plus 18 per cent for use of 36-foot cars, as provided in the tariff. The land-grant deduction as provided by law appears to have been made.

The shipments to Los Angeles moved via Benson, Ariz.; there was in effect at the time of movement a commodity rate of \$30 per 30-foot car from Benson to Huachuca, or in the reverse direction to that of the movements involved. The commodity rate from Benson to Los Angeles was \$95 per 30-foot car, subject to land-grant deductions. The aggregate of these rates, \$125 per car, was published, effective June 7, 1909, as the joint rate from Huachuca to Los Angeles.

On the first shipment the government paid, at the class-B rate with land-grant deductions, \$181.65 per 36-foot car, or a total sum of \$1,998.15 for the 11 carloads. Complainant alleges that had the charges been collected upon a basis of the so-called combination above referred to, the charges would have been, after land-grant deductions, \$115.85 per 36-foot car, or a total sum of \$1,274.33 for the 11 carloads. Reparation is asked in the sum of \$723.82, the difference between the amount paid and the amount that would have been paid had the lower rate been applied. We do not find that there was a combination of rates in effect at the time and in the direction of the movement which equaled \$125 per car as alleged. There was at the time, however, a class-B rate of \$3.30 per ton of 2,000 pounds applicable to shipments of horses in carloads, minimum weight 20,000 pounds, based on a car 30 feet long, when transported from Huachuca to Benson. The tariff naming the rate provided that for each additional foot in the length of the car the minimum weight was to be increased 3 per cent. At the same time there was in effect from Benson to Los Angeles a rate of \$95 for a 30-foot car, subject to the same increase as to length of car. Under these rates, and including land-grant deductions, the per car charge for the through movement of the shipment involved would amount to \$125.81 per car.

The position of the defendant is that a special service was contracted for on this shipment at the class-A rate of \$1.17 per 100 pounds, minimum weight 30,000 pounds, with land-grant deductions, or \$351 per carload, amounting to \$3,861. Upon this basis it is asserted that the application of class-B rates was made through error, and that the defendant should now collect \$1,862.85 additional on this shipment. When the shipment to Los Angeles reached its destination the waybill which had called for class-A rate was changed to agree with the bill of lading, and the class-B rate named in the tariff was collected. The reason for this change does not appear of record. The defendant in its brief says:

In this case the service was bad, and settlement having been made with the government, we do not now wish to make claim for the difference. * * * The accounts were closed, and we stand willing to abide by the settlement.

It would therefore appear that if a contract was made to govern the movement and rates applicable to the shipment, it was not carried

out, and the tariff rates were applied. The question presented is whether the charges collected were reasonable.

Within less than a year after the shipments moved the defendant established a through rate of \$125 per car applicable to shipments from Huachuca to Los Angeles. It is the contention of the defendant that this rate is a rate on live stock generally and has no reference to movements of live stock for the government, which is transported under special circumstances and conditions. The answer to this is that the horses in this case were transported at "tariff rates." There could not be, and we do not understand that there is, any question that the rate of \$125 would have been applicable to the shipments here in question had it been effective at the time. Under all the circumstances we are of opinion and find that charges in excess of \$125 per 30-foot car, with 3 per cent added for each additional foot in length, were unreasonable.

The second shipment in case No. 3234 consisted of one carload of cavalry horses, which moved September 19, 1908, from Huachuca to Atascadero, Cal., upon which charges were collected at the through class-B rate. Land-grant deductions were made and complainant paid a total sum of \$224.98 on a shipment in a 36-foot car. At the time of shipment the rate from Benson to Atascadero was \$130 per 30-foot car, with 3 per cent added for each additional foot in length, and subsequent to the movement a through commodity rate of \$160 per car was established from Huachuca to Atascadero. Upon consideration of all the circumstances governing this shipment we are of the opinion and find that charges in excess of \$160 per 30-foot car, with 3 per cent added for each additional foot in length, were unreasonable.

In arriving at the amounts of the reparation it is to be observed that complainant paid the sums of \$1,998.15 and \$224.98, respectively, for the shipments, which are based on the class-B rate, less certain land-grant deductions. Land-grant deductions are made under the provisions of a section of the Revised Statutes not incorporated in the act to regulate commerce. The deductions are made on settlements between the carrier and the auditing officers of the War Department.

We further find that complainant made the shipments as above stated and paid charges at rates herein found unreasonable; that it has been damaged in the sum of \$411.83, which is the difference between the amounts it did pay and the amounts it would have paid at the rates herein found reasonable; and that it is entitled to reparation in the above amount, with interest from August 5, 1909.

In this award no account has been taken of proper land-grant deductions, which, of course, may be determined between the parties as provided by law.

The shipment in case No. 3752 consisted of 14 carloads of horses and mules, moving from Huachuca to San Francisco, December 31, 1908. The bill of lading for this shipment calls for class-A rate "provided this rate not higher than tariff rate, with land-grant deduction—owner's risk, except where otherwise specified." The rate assessed upon this shipment was the class-A rate of \$1.27 per 100 pounds, minimum weight 30,000 pounds, without land-grant deduction, or \$381 per car, aggregating for the 14 carloads of live stock \$5,334. Complainant asks for reparation on the basis of a combination of rates, one of which is the rate of \$30 from Benson to Huachuca in the direction opposite to that of the movement involved.

We find that this shipment moved under a special contract entered into by the government and the carrier; that a special schedule was arranged and agreed upon for this movement; and that special-train service was furnished and extraordinary efforts put forth by defendant to care for the special train.

The Commission has held that carriers, either by contract or bid or other arrangement with the War Department, may lawfully make special rates or fares for the movement of federal troops, when moved under orders and at the expense of the United States Government, and that the rates or fares so made need not be posted or filed with the Commission. This shipment was coincident with a movement of federal troops. The rate applicable to the movement was that agreed upon in the contract, and there is nothing in the record upon which to base a finding that such rate was unreasonable. Under the circumstances the complaint in No. 3752 will be dismissed.

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No. 4162.
CITY OF CRAWFORD

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

No. 4162 (Sub-No. 1).

SAME

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION
COMPANY ET AL.

No. 4162 (Sub-No. 2).

SAME

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 4162 (Sub-No. 3).

SAME

v.

WALLA WALLA VALLEY RAILWAY COMPANY ET AL.

Submitted February 20, 1912. Decided October 15, 1912.

Present rates on fruits and vegetables from Louisiana and Texas points, on apples and other deciduous fruits from Oregon, Utah, and Idaho, and on citrus and deciduous fruits, canned goods, and vegetables from California points, to Crawford, Nebr., found unreasonable and reasonable rates prescribed.

J. W. Hartwell and J. E. Porter for complainant.

S. F. Miller, C. C. Wright, and Herman I. Aye for Chicago & North Western Railway Company.

C. E. Spens and R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

Edward T. Clark for Chicago, Burlington & Quincy Railroad Company and Denver & Rio Grande Railroad Company.

REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

In this proceeding the city of Crawford, Nebr., seeks a readjustment of its rates on fruit, vegetables, and canned goods from various

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points. The original petition attacks the rates on fruit and vegetables from Louisiana and Texas; Sub-No. 1, the rates on deciduous fruits from Oregon, Utah, and Idaho; while Sub-No. 2 challenges the rates on citrus and deciduous fruits, canned goods, and vegetables from California points. Sub-No. 3 was directed at rates from Oregon points on the line of the Oregon-Washington Railroad & Navigation Company, but these rates have since been adjusted to the satisfaction of the complainant, who, at the hearing, asked that this portion of its complaint be dismissed. The chief allegation, common to all the petitions, is that Crawford is discriminated against in favor of Missouri River cities, particularly Lincoln, Nebr. The reasonableness of the rates, however, is also challenged. On traffic from Oregon, Utah, Idaho, and California the Lincoln rates are sought, while on traffic from Louisiana and Texas, Crawford asks that its rates be reduced to the same basis per ton per mile over the rates to Kansas City, Mo., as the rates to Lincoln are over the rates to Kansas City.

No. 4162.

Crawford, a city of about 2,000 inhabitants, is situated in the northwestern part of the state of Nebraska, on the main line of the Chicago, Burlington & Quincy Railroad, extending from Billings, Mont., to Lincoln and Omaha, Nebr., and Kansas City, and on the Chicago & North Western Railway, running from Lander, Wyo., to Omaha. Kansas City is the gateway for Louisiana and Texas fruits and vegetables, and from that point they are hauled, usually by the Chicago, Burlington & Quincy, through Lincoln to Crawford. If moving via the Chicago & North Western, delivery is made to that line at Omaha. Neither of these delivering roads extends south of Kansas City. Taking Fort Worth, Tex., as a typical point of origin, the distance to Kansas City is 506 miles, to Lincoln 715 miles, and to Crawford 1,122 miles. The rates per 100 pounds are as follows:

Commodity.	From Fort Worth, to—		
	Kansas City.	Lincoln.	Crawford.
Watermelons:			
Jan. 1 to June 30.....	\$0.40	\$0.44	\$0.71
July 1 to Dec. 31.....	.35	.30	.66
Potatoes.....	.40	.44	.61
Cantaloupes.....	.50	.54	.93
Cabbage.....	.45	.49	.88
Strawberries, etc.....	.75	.80	1.08
Plums and peaches.....	.50	.55	1.43
Pears.....	.50	.55	1.15
Vegetables.....	.50	.54	1.03 1.18

¹ Applying on vegetables taking class C in western classification.

² Applying on vegetables taking fifth class in western classification.

For a haul 209 miles longer Lincoln takes rates from 4 to 5 cents higher than Kansas City. The Crawford rates are made the full combination on Lincoln and exceed the Kansas City rates by from 21 to 93 cents. This, complainant considers unreasonable and unjustly discriminatory, its contention being that the differential over Kansas City to Lincoln should be extended to Crawford and increased in proportion to the difference in distance Kansas City to Lincoln and Kansas City to Crawford. Under this theory Crawford, being 616 miles from Kansas City, would take rates only $11\frac{1}{2}$ to $14\frac{1}{2}$ cents higher than Kansas City. But neither the Chicago, Burlington & Quincy nor the Chicago & North Western, the only lines reaching Crawford, extends farther south than Kansas City and they have nothing to do with the rates from Louisiana or Texas to Kansas City or Lincoln. These rates are made by the lines reaching Kansas City and Lincoln from the producing points, and as those lines reach both Kansas City and Lincoln the Lincoln rate is made but a slight differential over Kansas City. This differential is considerably less than the local rate from Kansas City to Lincoln and is not fairly comparable with the local rate which is added to the Lincoln rate to make the rate to Crawford. The location of Crawford on lines which do not extend south of Kansas City, and the resultant necessity for an additional haul of 616 miles by another carrier, argues against the fixing of differentials over Kansas City or Lincoln to apply to Crawford on traffic from Louisiana and Texas.

On cantaloupes, strawberries, pears, plums, and peaches no through rates are in effect, the Lincoln combination applying, while on watermelons, potatoes, cabbage, and vegetables through rates are published, but they are the same as the combination on Lincoln. The per-ton-mile revenue at the existing rates is as follows:

Commodity.	From Fort Worth to—		
	Kansas City.	Lincoln.	Crawford.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Watermelons.....	1.581	1.23	1.265
Potatoes.....	1.581	1.23	1.087
Cabbage.....	1.778	1.37	1.560
Vegetables.....			
Class C.....	1.976	1.51	1.658
Fifth class.....			2.108
Peaches and plums.....	1.976	1.538	2.540
Pears.....	1.976	1.538	2.05
Strawberries.....	2.965	2.237	2.994

Under western classification the more perishable vegetables, such as green onions, new beets, asparagus, string beans, etc., known as summer vegetables, are rated fifth class, while mature or winter vegetables, embracing beets, carrots, onions without tops, etc., take

class C. Western classification applies from the Missouri River to Crawford and explains the two rates on vegetables to that point. The lines south of Kansas City and Lincoln, however, make no such distinction and the one rate is applicable to either summer or winter vegetables.

On watermelons, potatoes, cabbage, and winter vegetables the per-ton-mile revenue to Crawford is less than to Kansas City, while on the other commodities it is greater. To Lincoln the per-ton-mile earnings are of course less than to Kansas City, and generally less than to Crawford, the difference in favor of Lincoln being most material in the case of summer vegetables, peaches, pears, plums, and strawberries, upon which it is from 6 to 10 mills. The greatest difference in per-ton-mile earnings in favor of Kansas City as compared with Crawford is 6 mills on strawberries. The comparison to Lincoln we do not consider entirely fair because of the construction of rates to that point with reference to the Kansas City and Omaha rates. The distance from Fort Worth to Crawford is 221.7 per cent of the distance from Fort Worth to Kansas City and 157 per cent of the distance to Lincoln. The Crawford rates vary from 152.5 per cent of the Kansas City rate on potatoes to 286 per cent on plums and peaches, and from 138.6 per cent of the Lincoln rate on potatoes to 260 per cent on plums and peaches. On strawberries Crawford takes 224 per cent of the Kansas City rate and 210 per cent of the Lincoln rate, while on summer vegetables the respective percentages are 236 and 218. The present rate to Crawford yields a per-ton-mile revenue of approximately 3 cents on strawberries and 2½ cents on peaches and plums. Of course there is the haul of an additional carrier necessary to reach Crawford, and the volume of traffic to that point can scarcely be compared with the heavy tonnage to Kansas City and to Lincoln. Considering all of the facts before us, we do not find to be unreasonable or unjustly discriminatory the present rates to Crawford on watermelons and potatoes. The 88-cent rate on cabbage is 4 cents in excess of the combination on Lincoln, which is also true of the vegetable rates of 93 cents and \$1.18, and the 93-cent rate on cantaloupes. The rate on the latter commodity was said to be 81 cents, but we can only find cantaloupes included in the list of articles taking the 93-cent vegetable rate. It is said that defendants have instructed the Southwestern Lines Tariff Bureau to reduce the cabbage and vegetable rates to the Lincoln combination, but the tariffs on file with this commission do not indicate that the reductions have been made. We find these rates to be unreasonable and shall require defendants to establish rates not in excess of 84 cents on cabbage, 89 cents on winter vegetables, including cantaloupes, and \$1.14

on summer vegetables. The rates of \$1.68 on strawberries, \$1.43 on plums and peaches, and \$1.15 on pears we find to be unreasonable and shall require defendants to establish rates not in excess of \$1.43 on strawberries and \$1.14 on plums, pears, and peaches.

We are also asked to establish a through rate on vegetables to Crawford that will permit mixed shipments of summer and winter vegetables. Of course, mixed shipments may now be made, but they are subjected to charges either at the carload rate on the summer vegetables, or at the carload rate on the winter vegetables plus the less-than-carload rate on the remainder of the shipment from Lincoln. It is claimed that the more perishable nature and greater value of the summer vegetables necessitates this differentiation. As this involves a classification item, any change in which would affect the entire territory to which the classification applies, we do not feel justified, upon this record, in disturbing the existing practice.

Sub-No. 1.

From points in Oregon, Utah, and Idaho the rates to Crawford are 91 cents on apples and \$1.29 on deciduous fruits other than apples. Northport, Nebr., a station on the Chicago, Burlington & Quincy and the Union Pacific, 97 miles south of Crawford, is given the Missouri River rates of 75 cents on apples and 90 cents on other deciduous fruits. The addition of locals of 16 cents and 39 cents, respectively, from Northport makes the Crawford rates. Prior to September, 1911, the rates to Crawford were made the combination on Sidney, Nebr., a station on the Chicago, Burlington & Quincy and the Union Pacific, taking Missouri River rates, and situated 41.6 miles south of Northport. About this time the Union Pacific completed its branch from O'Fallon, Nebr., to Northport and, in accordance with its general rate-making policy in this section, extended to Northport the Missouri River rates, necessitating similar action by the Chicago, Burlington & Quincy. The shift in the basing point resulted in a reduction of the Crawford rates to the present figures. Complainant contends that as the haul to Crawford is about 300 miles less than to Lincoln, which takes Missouri River rates, it is entitled at least to the Lincoln rates.

None of the producing points is served by either the Chicago, Burlington & Quincy or the Chicago & North Western. Denver is said to be the gateway for all of this traffic, and at that point it passes to the Chicago, Burlington & Quincy. Although we are not affirmatively so advised, the record indicates that there is no movement via the Chicago & North Western. That carrier does not reach Denver nor, as compared with the Chicago, Burlington & Quincy, does it come reasonably near that general territory. The Union Pacific and

its allied lines serve both the points of production and the Missouri River cities. Northport is the northernmost Nebraska point reached by it, and to that station it extends the Missouri River basis. Because of the competition of this line the Chicago, Burlington & Quincy extends the Missouri River basis to all Nebraska points south of Northport and east of Broken Bow, a point on the Chicago, Burlington & Quincy main line 231 miles west of Omaha and 247 miles east of Crawford. This has the effect of making the Missouri River basis applicable to all of Nebraska except the northwestern section, in which is located Crawford. This section the Chicago, Burlington & Quincy and the Chicago & North Western consider as practically local to themselves and the rates are constructed on lowest combination, using the Missouri River rates to the nearest competitive point. However, the rates to Chicago, Detroit, and New York City from the same points of origin are only \$1 on apples and \$1.25 on other deciduous fruits. While there is possibly some dissimilarity of conditions between the transportation to Lincoln and to Crawford, we are of opinion that the existing rates are unreasonable and that reasonable rates should not exceed 75 cents on apples and 90 cents on other deciduous fruits.

Sub-No. 2.

From California points the rates, per 100 pounds, to Crawford and to Lincoln are as follows:

Commodity.	From California points to—	
	Crawford.	Lincoln.
Citrus fruits other than lemons	\$1.30	\$1.15
Lemons	1.30	1.00
Apples	1.14	1.00
Deciduous fruits other than apples	1.48	1.15
Vegetables	1.05	.95
Cabbage .....	.89	.75
Canned goods	1.05	.85

Prior to August 24, 1911, Crawford took a rate of \$1.48 on citrus fruits other than lemons and \$1.30 on lemons. On that date the \$1.30 rate was made applicable to all citrus fruits to Crawford because of the publication of that rate to Deadwood, S. Dak., to which point Crawford is intermediate. As in the case of fruit from Oregon and Idaho, the rates from California to Crawford are made the lowest combination of intermediate rates, Northport being the usual basing point. The \$1.05 rate on canned goods makes on Portland, Oreg., while the \$1.48 rate on deciduous fruits

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is made up of the \$1.15 Missouri River rate to Northport plus 33 cents, or 85 per cent of the local third-class rate of 39 cents. The use of this 33-cent factor is attributed to inadvertence, that rate being prescribed by the so-called Aldrich bill and applicable only to intrastate traffic.

The same defense is made of these rates as those treated under Sub-No. 1, and there is no difference in the transportation conditions. The present rates from California points to Chicago, Detroit, and New York on lemons are \$1; on other citrus fruits, \$1.15; and on canned goods, 85 cents. Deciduous fruits, including apples, move from and to the same points for \$1.15, vegetables to Chicago for \$1, and cabbage to Chicago for 75 cents.

Our opinion is that the existing rates are unreasonable and that reasonable rates from California points to Crawford should not exceed the following:

Commodity—	Per 100 pounds.
Citrus fruits other than lemons.....	\$1. 15
Lemons	1. 00
Apples	1. 00
Deciduous fruits other than apples.....	1. 15
Vegetables .....	. 95
Cabbage .....	. 75
Canned goods.....	. 85

Orders in accordance with these findings will be issued.

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No. 4714.

ARKANSAS FERTILIZER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL

Submitted September 1, 1912. Decided November 11, 1912.

The evidence establishing that the shipment on which reparation is claimed was delivered more than three years prior to the filing of the claim with the Commission, it is barred from consideration by the provision in the statute that claims for damages must be filed with the Commission within two years from the date the cause of action accrues, and not after. Complaint dismissed.

E. L. McHaney for complainant.

Martin L. Clardy, Henry G. Herbel, and Fred G. Wright for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation located in Little Rock, Ark., is engaged in the business of manufacturing and selling fertilizer. In its complaint, filed February 20, 1912, it alleges that it was charged an unreasonable rate for the transportation of a carload of fertilizer from Little Rock to Ravana, Ark. Reparation is asked.

The facts shown by the record are as follows:

February 11, 1907, complainant shipped from Little Rock to Ravana, via an interstate route, a carload of 540 bags of fertilizer, billed to one A. Stuckey. The shipment weighed 54,000 pounds, and complainant prepaid \$85.05 at a rate of 15½ cents per 100 pounds, which rate was quoted complainant by an agent of the St. Louis, Iron Mountain & Southern Railway Company, the originating carrier. Later the delivering carrier demanded an additional sum of \$66.15, based on a rate of 28 cents, which was the lawful tariff rate in force at the time the shipment moved, and this sum was paid by complainant on March 30, 1910.

This is the second time this claim has been considered by the Commission. September 26, 1910, more than three years after the shipment was delivered, the defendants herein, in behalf of complainant, applied to the Commission for authority to refund the sum of \$59.40, based upon an admission that the 28-cent rate was unreasonable to the extent that it exceeded 17 cents, the rate made applicable June 30, 1910, to the traffic in question from and to the points named. December 3, 1910, the application was denied on the ground that it was filed more than two years after the delivery of the shipment.

June 5, 1911, complainant filed a petition in the Commerce Court to set aside and annul the action of the Commission. The petition was dismissed by the court. *Arkansas Fertilizer Co. v. U. S.*, 193 Fed. Rep., 667. The court, however, was so divided in opinion that no decision was reached on the question of the application of the statute of limitations as provided in the 16th section of the act to the facts in this case. The part of the section in controversy is as follows:

All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after.

The Commission has held that without regard to the date of payment of the charges the cause of action of a shipper accrues when a shipment is delivered and the legal obligation of the carrier to collect freight charges attaches. *Blinn Lumber Co. v. S. P. Co.*, 18 I. C. C., 430.

The action of the Commission of December 3, 1910, was predicated on the authority of the case cited.

It is the contention of the defendants that the present proceeding amounts to a rehearing of an adjudicated case; that the mode of procedure by complainant is not in conformity with the provisions of the statute and the rules of the Commission pursuant thereto with respect of motions for rehearing; and that therefore the Commission is without power to issue any order in the case.

We are not impressed with the force of this contention. The Commission observes the substance and not the form of pleadings. The complaint in this case is not in form a motion for rehearing, but it amounts to that in all essential respects. It is alleged in the petition that the Commission denied the complaint which was filed September 26, 1910, without considering the merits of the case, because it held that the claim was barred by the provisions of the statute. Pursuant to the filing of the complaint, hearing has been had, testimony taken, and the St. Louis, Iron Mountain & Southern Railway Company has filed brief. The facts are as above stated, and do not in any substantial manner differ from the facts which were before the Commission when it denied the application of the carriers to make refund to complainant. It is clearly established that the shipment was delivered more than two years prior to the filing of any claim for damages with the Commission, and it is therefore barred from consideration under the limitation provided in the statute. The former action of the Commission in this case is therefore affirmed, and the complaint herein must be dismissed.

An order will be entered accordingly.

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INVESTIGATION AND SUSPENSION DOCKET NO. 134 AND 134-A.
IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN CLASS RATES BY CARRIERS OPERATING BETWEEN CERTAIN POINTS IN IOWA AND MINNEAPOLIS, MINN., AND OTHER POINTS.

Submitted November 4, 1912. Decided November 12, 1912.

For reasons given in the report herein, the proposed rates allowed to become effective and the order of suspension vacated.

W. P. Trickett and T. A. McGrath for Minneapolis Civic & Commerce Association and St. Paul Association of Commerce, protestants.

J. H. Henderson for state of Iowa and Board of Railroad Commissioners of Iowa.

P. W. Dougherty for South Dakota Railroad Commission.

W. H. Bremner and G. W. Seevers for Minneapolis & St. Louis Railroad Company.

O. W. Dynes for Chicago, Milwaukee & St. Paul Railway Company.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company.

C. C. Wright for Chicago & North Western Railway Company.

A. G. Briggs for Chicago Great Western Railroad Company.

B. J. Rowe for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Chairman*:

The principal tariffs under suspension are those of the Minneapolis & St. Louis Railroad Company, establishing class rates from St. Paul and Minneapolis, Minn., to certain points in the state of Iowa, being Supplement No. 12 to Minneapolis & St. Louis tariff No. A-310, I. C. C. No. A-123, and Supplement No. 2 to Minneapolis & St. Louis tariff 507-B, I. C. C. No. A-380, by their terms effective July 1 and 5, 1912. Tariffs of the Chicago & North Western Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Illinois Central Railroad Company are also under suspension, but the rates involved in the schedules of these latter companies are mainly inconsequential and may well go with the general question presented by the action of the Minneapolis & St. Louis Railroad Company.

In December, 1907, the commercial interests of the city of Des Moines, Iowa, filed complaint with this Commission alleging that rates from Des Moines to points in Minnesota and South Dakota were excessive and discriminatory as compared with rates from Minneapolis and St. Paul to points in Iowa. No. 1375, *Greater Des Moines Committee v. M. & St. L. R. R. Co.*, 18 I. C. C., 108. This case was set down for hearing at Des Moines in February, 1908. It appeared at the opening of that hearing that the complaint was not in suitable form to present the questions which the complainant desired to bring to the attention of the Commission, and it was also said upon the part of the defendant that it was satisfied that its rates could not be defended and that a schedule was then in preparation which it was believed would satisfy the reasonable complaint of Des Moines. The hearing was continued upon the understanding that this schedule in preparation was to be completed and filed and that the complaint was to be dismissed, if the rates established were reasonably satisfactory to the complainant.

These schedules were filed April 12, 1908, and on May 2, 1910, the complaint was dismissed without prejudice, at the request of the complainant.

Still later, Des Moines interests filed complaint alleging discrimination against Des Moines in the matter of rates from certain points of origin in the east, as compared with rates from Des Moines. The gravamen of this complaint had reference to Chicago and other eastern points of origin, but incidentally the rates in the schedules of April, 1908, were embraced. After hearing, this complaint was dismissed. *Greater Des Moines Committee v. C., M. & St. P. Ry. Co.*, 18 I. C. C., 73. Incidentally, the Commission approved, by dismissing this complaint, the adjustment of rates then in effect, but it can hardly be said that these particular rates were much considered.

The Minneapolis & St. Louis Railroad runs from Minneapolis almost due south into Iowa. In 1906, in consequence of an order of the railroad commission of the state of Minnesota, that railroad was compelled to reduce its rates from St. Paul and Minneapolis to points in Minnesota. At the same time with these reductions it advanced its rates from St. Paul and Minneapolis to points in Iowa, upon the theory, apparently, that these rates had been excessively low and that the company must in some way reimburse itself for the revenue which it would lose by its reductions in Minnesota. The effect of this tariff, it will be seen, was to reduce rates from the twin cities in Minnesota, but to advance them in Iowa. This tariff has been in effect since it was filed in 1906, and was in effect at the time the Commission dismissed the complaint in No. 1970.

Proceedings were begun in the federal courts to enjoin the establishment of the rates ordered by the Minnesota commission, and the

circuit court finally, as a result of these proceedings, held that those rates were confiscatory and should be enjoined. In consequence of this injunction the Minneapolis & St. Louis restored its rates to points in the state of Minnesota to what they had been previous to the forced reduction of 1906. At the same time it also restored the schedule to Iowa points; but it should be noted that the change to Minnesota points was an advance, while that to Iowa points was a reduction. The tariff restoring these rates, both to Minnesota and Iowa, was effective in July, 1911, and the rates published therein are now in effect.

It will be seen, therefore, that the effect of the tariff of 1911 was to advance rates from St. Paul and Minneapolis to points in Minnesota, but to reduce such rates to points in Iowa. The Minneapolis & St. Louis claims that the reduction to Iowa points was due to an error of its rate clerk in making out the schedule, and that its intent was only to advance its rates in the state of Minnesota.

There are now pending before the Commission certain complaints known as the *Iowa rate cases*. One of these, No. 4424, *State of Iowa v. A., T. & S. F. Ry. Co.*, was filed September 18, 1911, and puts in issue, among others, although somewhat indirectly and incidentally, these same rates from Des Moines to points in Minnesota and South Dakota, the allegation again being that they discriminate against Des Moines as compared with rates from the east. The Minneapolis & St. Louis Railroad is a party to certain of these tariffs, and when it came to prepare its defense in the above case it learned for the first time that its tariff of July, 1911, had reduced rates from St. Paul and Minneapolis to these Iowa points, and had therefore disturbed the arrangement which it had voluntarily made in 1908, and which the Commission had incidentally approved in No. 1970. Believing that the present rates were unfair as to Des Moines, and that they could not be defended, it at once filed the tariffs now under suspension for the purpose of restoring the relation which had formerly existed.

The tariff which is under suspension simply restores rates from St. Paul and Minneapolis to Iowa points to the basis which prevailed previous to the reduction of July, 1911. If that tariff be allowed to take effect the relation in rates and the rates themselves from St. Paul to these points in Iowa and from Des Moines to points in Minnesota will be the same as they have been since the tariff of April, 1908, was filed and the same as they were when No. 1970 was dismissed.

The commercial interests of Minneapolis protested against this advance, and it was upon their protest that the suspension was ordered. They claim, first, that the order of the circuit court re-

ferred both to state and interstate rates, and that the Minneapolis & St. Louis Railroad was under the same duty to restore its rates to points in Iowa that it was to restore them to points in Minnesota.

It seems evident that there could have been no legal obligation of this sort. The federal court had no jurisdiction in that proceeding of anything but state rates, and could therefore make no decree as to rates from Minneapolis and St. Paul to Iowa points.

The protestants also contend, broadly speaking, that rates from Chicago and other eastern points to Des Moines and similar territory discriminate as against Minneapolis, and they ask us to continue the lower rates now in effect and to forbid the higher rates under suspension in order that they may enter upon equal terms into this competitive field.

The Minneapolis & St. Louis is a comparatively small railroad leading north and south mainly. It is not a considerable factor in the general rate situation of which Minneapolis complains. The rates in question are entirely local rates from Minneapolis and St. Paul to this Iowa territory. We are not disposed to consider in this proceeding the broad question that is presented by the Minneapolis interests. If that question is to be raised it should be in some comprehensive proceeding to which the railroads responsible for the situation can be made parties.

It also appears that these rates may be indirectly involved in the proceeding brought by the Des Moines interests and now pending. The various questions there in issue are not passed upon. We consider here only the relative rate from Minneapolis south as compared with those from Des Moines north. The rates established by the tariff under suspension will be the same rates as those which were apparently approved by this Commission when the former complaint was dismissed.

These tariffs simply correct the inadvertent act of the Minneapolis & St. Louis Railroad and put back the relation between Des Moines and Minneapolis which had been established in consequence of the protest of Des Moines, which had existed for three years without complaint upon the part of Minneapolis, and which the railroad company believes to be right. We think they should be allowed to go into effect but that this decision should in no way prejudice the rights of any party in the *Des Moines case*, which is now pending, nor the right of the Minneapolis interests to raise this question of discrimination in a new proceeding.

The order of suspension will be vacated.

25 I. C. C.

No. 3823.
CONIFER LUMBER COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted November 3, 1911. Decided October 7, 1912.

A carload of lumber shipped from Brewton, Ala., to New Haven, Conn., and re-consigned to East Cambridge, Mass., was misrouted by one of the defendants. Reparation awarded.

Pope Foster for complainant.

E. A. de Funiak for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a copartnership engaged in the manufacture and sale of lumber, with principal place of business at Montgomery, Ala. By petition, filed February 3, 1911, it alleges that as a result of failure of defendants to follow routing instructions unreasonable charges amounting to \$234.32 were assessed for the transportation of one carload of yellow-pine lumber shipped November 3, 1908, from Brewton, Ala., to New Haven, Conn. Reparation is asked in the sum of \$60.24. The claim was first presented to the Commission on June 14, 1910.

The shipment moved via the Louisville & Nashville Railroad to Cincinnati, Ohio; Baltimore & Ohio Southwestern Railroad to Parkersburg, W. Va.; Baltimore & Ohio Railroad to Martinsburg transfer, W. Va.; Cumberland Valley Railroad to Shippensburg, Pa.; Philadelphia & Reading Railway to Allentown, Pa.; Central Railroad of New Jersey to Easton, Pa.; Lehigh & Hudson River Railway to Maybrook, N. Y.; Central New England Railway to Hopewell Junction, N. Y.; and New York, New Haven & Hartford Railroad to New Haven. The bill of lading issued by the initial carrier bore routing instructions "via Harlem River station, N. Y., and N. Y., N. H. & H. Ry.," and the failure to send the car via Harlem River station is alleged to have deprived complainant of the privilege of reconsignment to East Cambridge, Mass., the destination for which the car was intended.

At the time of the movement Louisville & Nashville Railroad tariff, I. C. C. No. A-7337, as amended, in connection with certain authorized guidebooks, named a joint rate of 34 cents per 100 pounds on yellow-pine lumber, carloads, from Brewton to both New Haven and East Cambridge. This rate applied via Harlem River station in connection with the Louisville & Nashville; Pittsburgh, Cincinnati, Chicago & St. Louis; Pennsylvania; and New York, New Haven & Hartford railways; as well as via the Louisville & Nashville; Baltimore & Ohio Southwestern; Baltimore & Ohio; and New York, New Haven & Hartford railways. There was no joint rate via the route traversed, the lawful combination to New Haven having been 43 cents; 31 cents to Maybrook, N. Y., and 12 cents beyond. The Harlem River station route is claimed by the Baltimore & Ohio to have been closed to that line at the time, but there is no record to that effect in tariff publications on file with the Commission, and the defendant Louisville & Nashville Railroad maintains that it had not been served with notice of such closing. The Harlem River station route was open via the Pennsylvania Railroad, and it was contended by complainant that had the shipment been delivered by the Louisville & Nashville to the Pittsburgh, Cincinnati, Chicago & St. Louis Railway, petitioner could have diverted the car at Harlem River station to East Cambridge, Mass., at the joint through rate of 34 cents; instead of which it was finally reconsigned from New Haven via Boston and East Cambridge at a local rate of 11 cents per 100 pounds to Boston plus 2½ cents per 100 pounds beyond.

The rate from New Haven to Boston was 11 cents per 100 pounds, and certain defendants, relying upon the New Haven's reconsigning tariff, I. C. C. No. 6742, stated in answer and at hearing that this proportion should be reduced one-half, or down to 5½ cents per 100 pounds, and that they were prepared to refund an overcharge of \$18.43. It appears, however, that the reconsignment at half-rate under the tariff in question is authorized only on carload shipments "which have been refused," and the record contains nothing to indicate refusal of this car at New Haven. Therefore, the lawful rate beyond New Haven was as above shown.

The New York, New Haven & Hartford Railroad had in effect at the time of movement, and still has, lawful tariff publications authorizing reconsignment at Harlem River station without extra charge, provided reconsignment notice is placed at Harlem River station prior to arrival of the car at that point. At the time of the movement, by preface to its Tariff Circular 15-A, the Commission had provided for the continuance in force as lawful tariffs those tariffs which were lawfully on file prior to May 1, 1907. The tariff of the Louisville & Nashville, I. C. C. A-7337, effective April 1, 1905,

one of the old forms of tariffs, subject to this provision contained the following rule:

There are no terminal charges or any rules or regulations in effect at destination which in any wise change, affect, or determine any part of the aggregate of the rates named in this tariff to points off the line of the L. & N. R. R., except as published and filed with the Interstate Commerce Commission by the terminal lines which have signified concurrence in these rates.

In our view this rule was sufficiently broad and comprehensive to cover additional charges or rules and regulations governing reconsignment and other transit privileges whether at an intermediate point or at final destination.

The record discloses that many cars had been handled for complainant in the manner in which it endeavored to have this one handled. Notice of reconsignment was placed at Harlem River in advance of the date the car would have reached there had routing instructions been observed. Complainant was entitled to have these instructions observed and manifestly would have had the benefit of reconsignment had this been done.

The car was delivered to the Baltimore & Ohio Southwestern Railroad at Cincinnati, routed "via Harlem River station, N. Y. and N. Y. N. H. & H. R. R." The Baltimore & Ohio Southwestern ignoring this routing billed it via the Maybrook route on the ground that the Baltimore & Ohio route via Harlem River station had been closed, but as heretofore shown the publications of record with the Commission, and these are conclusive in such matters, do not substantiate this claim.

Upon the record we are of the opinion and find that due to misrouting of the shipment by the Baltimore & Ohio Southwestern Railroad Company complainant was subjected to the payment of charges which were unreasonable and was damaged thereby to the extent that they exceeded \$174.08. We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate herein found to be unreasonable and that complainant has been damaged to the extent of the difference between the amount that was paid and the amount that it would have paid at the rate above found reasonable, and is therefore entitled to an award of reparation in the sum of \$60.24, with interest from December 5, 1908. An order will be entered accordingly.

25 I. C. C.

No. 4256.
A. LEACH
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL

Submitted March 15, 1912. Decided October 7, 1912.

Charges assessed on an emigrant movable outfit, including 15 head of live stock, loaded into a single car, found unreasonable in that they exceeded the tariff charges for two cars of emigrant movables. Reparation awarded.

Haddock & Johnson for complainant.

J. V. Lyle for Northern Pacific Railway Company and Oregon-Washington Railroad & Navigation Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By petition, filed July 18, 1911, complainant alleges that he was charged an unreasonable rate for the transportation during May, 1910, from Prosser, Wash., to Shoshone, Idaho, of 6,375 pounds of household goods and farm implements and approximately 13,600 pounds of live stock numbering 15 head. The shipment was loaded in a single 36-foot car, which moved via Northern Pacific Railway to Wallula, Wash., thence via the Oregon-Washington Railroad & Navigation Company and Oregon Short Line Railroad to destination. No joint rate was applicable; charge were assessed and paid as follows:

On the Northern Pacific Railway:

One full carload of live stock-----	\$28. 40
6,375 pounds of household goods, l. c. l.-----	80. 05

On the Oregon-Washington Railroad & Navigation Company and Oregon Short Line Railroad:

One full carload of live stock-----	184. 00
One full carload of household goods-----	135. 80

Total-----	\$28. 25
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Through error in construing live stock and household goods tariff provisions the Northern Pacific Railway agent at Prosser undercharged the consignment \$4.50.

At the time this shipment moved the western classification provided for a minimum weight of 20,000 pounds and class-B rates on emigrant movables, limiting the number of head of live stock loading in a
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single car to 10. This classification governed the concurrently effective class-B rate of 18 cents per 100 pounds from Prosser to Wallula and as to loading restrictions also governed a 50-cent commodity rate applicable from Wallula to Shoshone. Had the consignment been loaded in two cars, so dividing the stock as to place not exceeding 10 head in either car, the tariff regulations so applied would have resulted in the following charges:

Two cars emigrant movables, 40,000 pounds:

Prosser to Wallula, at 18 cents-----	\$72.00
Wallula to Shoshone, at 50 cents-----	200.00
Total-----	272.00

There was no definite provision in the western classification as to the manner of assessing charges on the excess five head of stock loaded in a single car of emigrant movables. The defendant carriers concede that the charges paid were unreasonable to the extent of \$54.25, which represents the difference between \$326.25 and \$272.

Had the carrier itself loaded the consignment there would be no question as to its liability for damages for a failure to so load as to obtain the lowest tariff rate which would base as shown on two cars of emigrant movables. The record shows that when about to load his property at Prosser the shipper explained that he had 15 head of live stock, and he suggested to the Northern Pacific agent that two cars should be furnished him. The agent, however, instructed him to load all the stock in the car with the other goods, stating that such would be the cheapest method of transportation. Had the less-than-carload rates been assessed on the excess 5 head of live stock the total charges would still aggregate considerably more than \$272 and as stated the tariff did not so provide for this contingency.

The complainant seeks a modification of classification ratings whereby lower ratings than less-than-carload rates will apply on excess live stock loaded in the same car with an emigrant movable outfit, including 10 head of live stock, but this contention is resisted by defendants. The latter agree that the western classification should be made to definitely cover the assessment of charges in a contingency of this kind, suggesting that the official classification be followed, whereby any excess of the number of live stock allowed with emigrant movables shall be charged as a less-than-carload shipment upon estimated weights per animal.

Defendants contend that the emigrant movable rating of the western classification is reasonable, admitting of a broad and liberal mixture of an intending settler's goods and farm stock and that if more than 10 head are allowed under the usually low rate it will be impracticable to maintain the higher rates on straight live-stock shipments.

The record presents no proper or sufficient basis of facts upon which to make a finding as to the general reasonableness of carriers' tariff provisions for live stock in connection with emigrant movable ratings.

From the facts of record we find that the complainant paid charges on the consignment herein described in excess of the lawful rate and that he has been damaged by defendant carriers to the extent of the difference between the amount which he did pay and the amount which he would have paid under the tariff had the shipment been loaded in two cars; and that he is entitled to an award of reparation in the sum of \$54.25, with interest from May 23, 1910. An order will be entered accordingly.

No. 4678.

LEBANON COMMERCIAL CLUB

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 1952.

Submitted October 24, 1912. Decided December 2, 1912.

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1. Class rates from Louisville, Ky., to Lebanon, Ky., which are applied as portions of through rates on interstate traffic found to be unreasonable and rates for the future prescribed.
 2. That portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company et al., which seeks authority to continue lower class rates to Junction City, Ky., from Louisville, Ky., on interstate traffic, than are concurrently in effect on like traffic to Lebanon, Ky., an intermediate point, denied.

John McChord for complainant.

William A. Northcutt and *Albert S. Brandeis* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complaint is made by the Lebanon Commercial Club, an association of business men of Lebanon, Ky., that the inbound rates to Lebanon on freight originating outside of the state of Kentucky and passing through Louisville, Ky., are unreasonable, and subject Lebanon to undue prejudice and disadvantage in favor of Junction

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City, Ky.; and, further, that the fourth section of the act to regulate commerce is violated in that lower rates are charged to Junction City from Louisville than are concurrently in effect to Lebanon, an intermediate point. That portion of Fourth Section Application No. 1952 of the Louisville & Nashville Railroad Company et al., which seeks authority to continue lower rates to Junction City from points on or north of the Ohio River than are concurrently applicable on like traffic to Lebanon, an intermediate point, was heard in connection with this case.

Lebanon, a city of about 3,100, is located in the grazing and farming section of central Kentucky 67 miles southeast of Louisville on the Lebanon or Knoxville line of the Louisville & Nashville Railroad and is a local station on that railroad. Junction City is 28 miles beyond Lebanon and 95 miles from Louisville on the same branch of the Louisville & Nashville. The Louisville & Nashville intersects the Cincinnati, New Orleans & Texas Pacific Railway at Junction City, which is 121 miles south of Cincinnati, Ohio, via the latter road. The Southern Railway extends through territory similar and adjacent to that traversed by the Lebanon Branch of the Louisville & Nashville, from Louisville to Danville, Ky., a point 5 miles north of Junction City on the Cincinnati, New Orleans & Texas Pacific Railway and with that carrier it forms a through route from Louisville to Junction City, 97 miles in length.

The Louisville & Nashville and its connections maintain through routes from points north of the Ohio River to Lebanon, the rates applicable thereto being made up of a combination of the rate to the Ohio River plus the rate from the crossing point to Lebanon. It is against the latter factor which is made by the Louisville & Nashville that the complaint is directed. About 90 per cent of this traffic originating in official and western classification territory moves through the Louisville gateway and takes the Louisville-Lebanon rates south of the Ohio River, in which territory the southern classification governs. The evidence introduced related principally to those rates and they are the ones considered in this report. Rates referred to herein are given in cents per 100 pounds, except as to class F, which are in cents per barrel. Classes L, M, and N are carload rates.

The class rates from Louisville to Lebanon which are the standard distance scale rates of the Louisville & Nashville Railroad are:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	45	39	34	31	28	26	26	26	17	12	26	26	34	21	17	13	8

Class rates from Louisville to Junction City are:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N		
Rate.....	40	34	30	24	21	20	20	24	cl	1cl	14	21	28	cl	1cl	10	18	12	9
									16	18				32	36				

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The Louisville & Nashville, whose answer is in substance a general denial of the material allegations of the complaint, asks for relief from the provisions of the fourth section on the ground that its rates from Louisville to Junction City are made to meet the rates in force via the Southern Railway and Cincinnati, New Orleans & Texas Pacific Railway. There is nothing in the record to indicate that the Louisville & Nashville with a one-line haul for a distance of 95 miles is at any substantial disadvantage in handling traffic between Louisville and Junction City as compared with the two-line haul a distance of 97 miles via the Southern Railway and Cincinnati, New Orleans & Texas Pacific Railway; and it may be here remarked that the rates via the latter route do not violate the fourth section. No showing has been presented to justify the Louisville & Nashville in not conforming to the provisions of the fourth section in its application of rates from Louisville to Lebanon intermediate to Junction City, and that portion of Fourth Section Application No. 1952, which was heard in connection with this case will be denied.

The Louisville & Nashville charges class rates from Cincinnati, Ohio to Cynthiana, Ky., a local station on its Kentucky division, a distance of 66 miles, as follows:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	27	24	21	15	13	12	13	15	12	11	15	18	24	12	12	8	7

The Cincinnati, New Orleans & Texas Pacific charges class rates from Cincinnati to Delaplain, Ky., a local station on its line, a distance of 66 miles, as follows:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	26	25	21	15	13	10	10	13	10	10	13	15	20	$\frac{K}{6}$	100 ¹	150 ²	

¹ Per 2,000 pounds.

² Per 2,240 pounds.

The Cincinnati, New Orleans & Texas Pacific Railway and the Kentucky division of the Louisville & Nashville parallel each other south from Cincinnati through central Kentucky and there is doubtless some cross-country competition between the two roads. The Louisville & Nashville asserts that the rates on its Kentucky division reflect the rates in force on the Cincinnati, New Orleans & Texas Pacific owing to the cross-country competition between the two lines, but there is no claim that they are not remunerative.

To McBrayer, a local station on the Southern Railway 68 miles from Louisville the rates in force are:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	28	25	22	20	18	15	15	16	13	10	15	15	20	10	12	8	7

The following rates are carried by the Louisville & Nashville from Louisville to local stations on its line in central Kentucky, the distance of each of said stations from Louisville being, to Newtown, 94 miles; Centerville, 98 miles; and Elizabeth, 99 miles:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	28	25	21	15	14	13	13	15	12	12	15	18	24	13	13	10	8

The Louisville & Nashville also charges the following rates to local stations on its line in central Kentucky:

	Class, and rate per 100 pounds.																	Distance.
	1	2	3	4	5	6	A.	B.	C.	D.	E.	H.	F.	I.	L.	M.	N.	
From Lexington to:																		Miles.
Rosedale Park..	28	24	21	15	13	12	13	15	12	12	15	21	24	13	13	10	8	94
Mullins.....	28	24	21	15	13	12	13	15	12	12	15	21	24	13	13	10	8	89
Rowland.....	28	24	21	13	13	12	13	15	12	12	15	21	24	13	13	10	8	105
From Covington to:																		
Flanagan.....	28	25	21	15	14	13	13	15	12	12	15	18	24	13	13	11	8	90

From Louisville to Lexington, Ky., a distance of 94.2 miles, class rates via the Louisville & Nashville are:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	28	25	21	15	13	10	10	13	10	10	13	15	20	$\frac{21}{10}$	10	7	6

A witness for the complainant who is engaged in the wholesale grocery business at Lebanon, testified that under the present rates to Lebanon traffic which would naturally move through the Louisville gateway and direct to Lebanon via the Louisville & Nashville is diverted by his company to Junction City, either through Cincinnati over the Cincinnati, New Orleans & Texas Pacific, or through Louisville over the Southern Railway and Cincinnati, New Orleans & Texas Pacific, and is then hauled in wagons 28 miles to Lebanon. About one-half of his inbound tonnage is brought into Lebanon in this manner, and he stated that without making use of the lower rates to Junction City, which necessitates a 28-mile wagon haul to Lebanon, the business could not be successfully carried on at Lebanon. Other witnesses for complainant expressed similar opinions.

Upon full consideration of the facts and circumstances of this case it is our conclusion that the present class rates from Louisville to Lebanon charged for the transportation of interstate traffic moving through the Louisville gateway to Lebanon, as portions of through rates from various interstate points of origin to Lebanon are unreasonable and that said rates should not exceed the following for the several classes:

Class.....	1	2	3	4	5	6	A	B	C	D	E	H	F	I	L	M	N
Rate.....	28	25	22	20	18	15	15	16	13	10	15	15	20	10	12	8	7

An adjustment upon such basis will remove any undue discrimination there may now be against Lebanon in favor of Junction City under the rates condemned.

Orders will be entered in accordance with the findings herein announced.

25 I. C. C.

No. 4156.

BAKER COMMERCIAL CLUB

v.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.

Submitted September 1, 1912. Decided December 2, 1912.

Class rates from Baker City, Oreg., to points on the Oregon Short Line between Olds Ferry, Idaho, and Vale, Oreg., found to be unreasonable, and joint class rates prescribed for the future.

F. H. McCune for complainant.

F. C. Dillard, H. A. Scandrett, W. W. Cotton, P. L. Williams, and J. V. Lyle for Oregon-Washington Railroad & Navigation Company and Oregon Short Line Railroad Company.

REPORT OF THE COMMISSION.

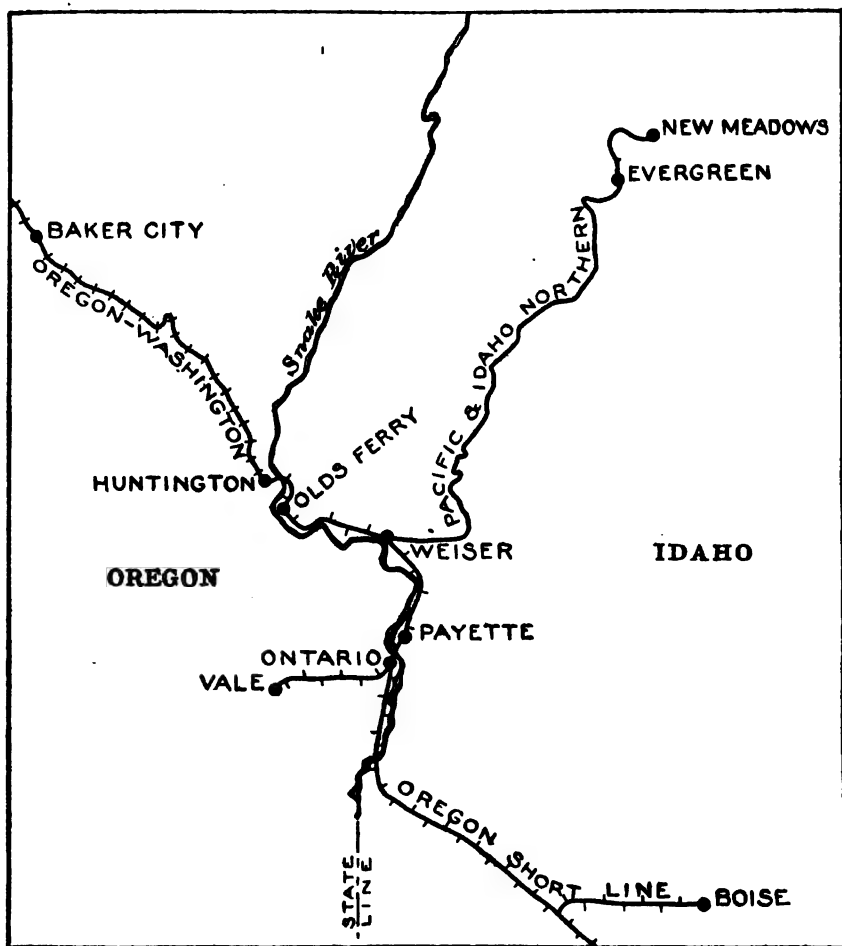
LANE, Commissioner:

The complaint in this case attacks as unreasonable and discriminatory the class rates from Baker City, Oreg., to all points on the Pacific & Idaho Northern Railway, a short road wholly within Idaho, and to points on the main line of the Oregon Short Line Railroad Company between Olds Ferry, Idaho, and Ontario, Oreg., and also to Vale, Oreg., on a branch line which leaves the main line at Ontario. The rates from Baker City to Ontario and Vale although applying between points in Oregon are interstate because the route passes through Idaho. Baker City, the largest community in eastern Oregon, is a county seat of 7,000 population located on the line of the Oregon-Washington Railroad & Navigation Company, 357 miles east of Portland. The Oregon Short Line connects at Huntington, Oreg., with the Oregon-Washington road and runs eastward from there, passing through Weiser, Idaho, at a distance of 23 miles from Huntington. The Pacific & Idaho Northern Railway connects with the Oregon Short Line at Weiser and runs north from there through mountainous country for a distance of 90 miles to New Meadows, Idaho. Baker City is a distributing center for part of the surrounding territory, but it is alleged that its merchants can secure little trade east of Huntington, which is 48 miles distant, on account of the advantages in rates enjoyed by the jobbers of Boise, Idaho, which is

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located 102 miles east of Huntington on a branch of the Oregon Short Line.

The only evidence that was offered tending to show discrimination against Baker City was the fact that the Oregon Short Line and the Pacific & Idaho Northern had until the time of this complaint maintained joint rates lower than the sum of the locals from Boise on the Oregon Short Line to Evergreen, Idaho, on the Pacific & Idaho North-



ern while only combination rates applied from Baker City to Evergreen. These joint rates, it appears, were put into effect in 1907 in order to compete for traffic which was being carried by wagon from Boise to points northeast of Evergreen. But within the past year the Pacific & Idaho Northern Railway has been extended from Evergreen to New Meadows so that this wagon competition has been overcome and as a result the joint rates in question were canceled

on July 19, 1911, after this complaint was brought. At the present time there are no joint rates in effect from any points to stations on the Pacific & Idaho Northern. That part of the complaint, therefore, alleging discrimination finds no support from the facts disclosed by the record.

From Baker City to points on the Pacific & Idaho Northern the class rates are made by combination of the local rates from Baker City to Huntington, Huntington to Weiser, and Weiser to destination. These rates are attacked as unreasonable. So far as concerns competition between Baker City and Boise to points on the Pacific & Idaho Northern the complaint raises a question of the relation of rates from Baker City and Boise, respectively, to Weiser because the factor of the through rate from Weiser to destination is the same in each case.

The through rates at present applying from Baker City to Pacific & Idaho Northern points are constructed as follows:

	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Baker City to Huntington (O.-W. R. R. & N.).....	48	40	34	28	24	20	20	16	12	10	8
Huntington, Oreg., to Weiser, Idaho (O. S. L.).....	28	26	21	18	15	13	13	10	8	6	5
Baker City to Weiser.....	71	65	55	46	39	33	33	26	20	16	13.

plus the locals from Weiser to destination.

The through rates from Boise to Pacific & Idaho Northern points are constructed as follows:

	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Boise to Weiser.....	79	38	32	27	21	21	21	21	18	13	10

plus the locals from Weiser to destination.

As the above tables show, the rates from Baker City to Weiser are much higher than from Boise to Weiser although the distance from Baker City is shorter. In justification of this the defendants point out that the haul from Baker City to Weiser is over two lines while the haul from Boise is over but one. Boise, however, is on a branch 20 miles from the main line, so that the cost of the service in the two cases is about the same. We see no reason why the rates from Baker City to Weiser should not be on as low a scale as those from Boise to Weiser.

The rates from Baker City to the Oregon Short Line points in question, including Vale which is on a branch line, are constructed by adding the distance rates from Baker City to Huntington to the

distance rates from Huntington to destination. Below are given the through rates of which complaint is made:

From Baker City, Oreg., to—	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Olds Ferry, Idaho.....	57	54	48	38	32	27	27	22	16	14	11
Weiser, Idaho.....	71	65	55	46	39	33	33	26	20	16	13
Payette, Idaho.....	83	74	63	52	44	37	37	30	22	19	15
Ontario, Oreg.....	87	84	71	59	50	42	42	34	25	21	17
Vale, Oreg.....	103										

The following rates apply from Boise over a branch of the Oregon Short Line to Nampa, Idaho, and thence to destination:

From Boise, Idaho, to—	Miles.	Classes.									
		1	2	3	4	5	A	B	C	D	E
Ontario, Oreg.....	62	33	30	25	20	20	20	18	16	12	9
Payette, Idaho.....	66	33	30	25	20	20	20	19	17	12	10
Vale, Oreg.....	78	48	42	35	28	25	25	20	18	13	10
Weiser, Idaho.....	79	38	32	27	21	21	21	21	18	13	10
Huntington, Oreg.....	102	60	51	43	35	31	31	25	22	16	12

When it is remembered that all the rates set forth in these two tables apply to points which are on the direct line between Baker City and Boise (excepting the rates to Vale which is on a branch line), it is evident that merchants in Boise can extend their trade much nearer toward Baker City than those of Baker City can toward Boise. The journey from Boise to Vale involves not only a branch-line haul of 20 miles from Boise to Nampa and a main-line haul of 42 miles, but also another branch-line haul of 16 miles from Ontario to Vale, and yet the rates are much lower for this service than for about the same distance over main line from Baker City to Payette. To points on the main line it will be seen that the advantage of Boise is even more pronounced.

We conclude that the present class rates from Baker City to Olds Ferry, Weiser, Payette, Ontario, and Vale and points intermediate on the Oregon Short Line are unreasonable. We find the following to be reasonable joint rates to be applied by the Oregon-Washington Railroad & Navigation Company and the Oregon Short Line:

From Baker City, Oreg., to—	Classes.									
	1	2	3	4	5	A	B	C	D	E
Olds Ferry, Idaho.....	35	30	25	21	18	18	14	11	9	7
Weiser, Idaho.....	40	34	28	24	20	20	16	12	10	8
Payette, Idaho.....	46	39	32	28	23	23	18	14	12	9
Ontario, Oreg.....	46	39	32	28	23	23	18	14	12	9
Vale, Oreg.....	62	53	43	38	31	31	24	19	16	12

At the hearing there was no appearance on behalf of the Pacific & Idaho Northern Railway. As we have seen, there is no basis shown in the present record for finding that it is a party to any rates that are discriminatory. As compared with the rates of other small independent roads in this territory the rates of this road appear high, but whether or not they are justified by small tonnage and extraordinary cost of operation does not appear, and in view of the incompleteness of the record any conclusion that they are unduly high would be a mere surmise. We therefore make no finding as to the rates on the Pacific & Idaho Northern which are factors in the combination rates from Baker City, nor can we at this time find that joint rates should be established to points on this line. But as a factor in the combination rates from Baker City to Pacific & Idaho Northern points the other defendants will be required to apply the rates above found to be reasonable from Baker City to Weiser.

An order will be issued in accordance with the above findings.

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No. 4735.

IN THE MATTER OF THE INVESTIGATION OF ALLEGED
IRREGULARITIES IN MINE RATINGS AMONG THE
COAL MINES SERVED BY THE ILLINOIS CENTRAL
RAILROAD COMPANY.

Submitted October 21, 1912. Decided December 3, 1912.

In a controversy over the ratings of coal mines by the Illinois Central Railroad as a basis for car distribution in periods of car shortage, the respondent and the operators of mines local to the Illinois Central contended that the ratings should be based solely upon shipments previously made via the Illinois Central. Operators of junction-point mines that are served by respondent and also by one or more other carriers contended that they should be rated by each road serving them, just as if they were local to each road. Respondent and a minority of the local operators contended for ratings based upon the shipping experiences of a substantial preceding period. The junction-point operators and a majority of the local operators insisted upon ratings based upon the hourly capacities of the several mines; *Held*, That the ratings of the mines shall be based upon their several hourly capacities for production; that the mines that have outlet by river shall be treated as junction-point mines; that upon days for which the junction-point mine orders no cars from another carrier it shall have its full rating on the Illinois Central; that upon a day for which it orders cars from one other carrier its rating on the Illinois Central for that day shall be 75 per cent of its full rating; and that upon a day for which it orders cars from two other carriers its rating on the Illinois Central for that day shall be 50 per cent of its full rating.

R. V. Fletcher, A. P. Humburg and Blewett Lee for Illinois Central Railroad Company.

Cassoday, Butler, Lamb & Foster for junction-point mine operators.

Thomas L. Wolf for Railroad & Warehouse Commission of Illinois.

Silas A. Shafer for Pana Coal Company and Smith-Lohr Coal Company.

T. M. Sackett for Taylor Coal Company of Kentucky and Williams Coal Company.

R. W. Ropiequet for local Illinois mine operators.

W. A. Wickliffe for local Kentucky mine operators.

Charles M. Johnston for Ohio Valley Coal & Mining Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This proceeding grows out of a protracted controversy between the Illinois Central Railroad Company and the operators of coal mines located upon its lines, relative to the mine ratings which form the basis of car distribution in times of car shortage, and the rules governing such distribution of cars.

The principal underlying cause of this controversy is conflict of interest among the mine operators themselves. There are 168 coal mines on the Illinois Central, of which 114 are local to its lines, 45 are junction-point mines which have other railroad connections, and 9 have outlet by river. These mines are spread over a territory 461 miles long and 226 miles wide in the states of Illinois, Indiana, and Kentucky. Only 20 mines on the entire system average an annual loading of more than 10 cars per day and only 1 as much as 27 cars per day.

The junction-point operators contend that their mines should be rated at their full capacity just as if they were not served by any carrier other than the Illinois Central, and regardless of the tonnage which they ship over other roads. The Illinois Central and the local mine operators contend that the basis of rating should be the actual shipments over the Illinois Central road.

Beginning in 1907 the Illinois Central from time to time issued rules governing the rating of mines and distribution of cars, which will be referred to in detail later. These rules were protested against by mine operators, and in 1910, on request of the parties, the Commission attempted informally to harmonize the differences. The operators as a whole then formed an association and agreed upon rules, which rules were adopted by the railroad company. Operating conditions on the Illinois Central were greatly disturbed and disorganized as a result of a strike among its employees and this resulted in dissatisfaction among the mine operators, which culminated in their abandoning all effort to agree upon a basis of ratings and the adoption of resolutions under which the entire responsibility was thrown upon the railroad company. The railroad promulgated new regulations, which were even more unsatisfactory to the operators than those which were thus superseded. The old rules were returned to for the remainder of the season, and the Commission was requested to investigate the situation and decide the controversy.

In 1907 Illinois Central circular No. 70 gave the junction-point mine the same rating as though it were local to the Illinois Central. This basis was continued in circular No. 77, issued July 1, 1908.

In February, 1910, under circular No. 85, the capacity basis of rating was continued, but reference to the junction-point mines as distinguished from local mines was omitted.

In November, 1910, under circular No. 88, the shipments made over the Illinois Central were for the first time made the basis of mine ratings. It is stated that this was done in conformity to what the Illinois Central believed to be the findings of the Commission in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, 19 I. C. C., 356. This was the first circular in which the relationship of the junction-point mines and the local mines was defined. This adjustment was promptly opposed by the junction-point operators, who contended that the arrangement was unjustly discriminatory against them, and in that connection the informal efforts of the Commission previously referred to were invoked. Circular No. 89 was issued to remain in effect until April 1, 1911, the end of the car-shortage period for that season.

The representatives of the railroad and the operators having agreed upon a set of rules, they were promulgated in circular No. 91. As stated, the operation of these regulations was seriously interfered with by a strike of railway employees, and in December, 1910, the operators withdrew from participation in an effort to agree upon rules and cast the entire responsibility upon the railroad.

In February, 1912, in circular No. 93, the rating of the mines was based upon the total shipments over the Illinois Central for the period between January 1 and September 30, 1911. The experiences of that period were increased by 50 per cent for the local mines and by 60 per cent for the junction-point mines, and their respective ratings were thus established.

This rating was protested by certain operators and appeal was made to the Railroad & Warehouse Commission of Illinois, which commission ordered, as to state shipments, a return to the rules that were in effect on October 1, 1911, in circular No. 91. Those rules were restored as to all shipments for the period ending April 1, 1912, the end of the car-shortage period for that season, and, as we understand, are now in force. Responsive to our invitation, the Illinois commission was represented in the instant case.

Officers of the Norfolk & Western and Baltimore & Ohio railroads testified as to the ratings on those roads. It appears, however, that on those systems the movement is reasonably steady throughout the year, while on the Illinois Central the winter shipments far exceed in volume those of the summer. There are comparatively few junction-point mines on the Baltimore & Ohio or the Norfolk & Western. They make no distinction between the junction-point mine and the local mine.

The difficulties of the winter of 1911-12 on the Illinois Central were accentuated by the fact that the operators had furnished the railroad, as a basis of car distribution, ratings far in excess of the possibilities of shipment. No doubt the volume of shipments was

restricted by the difficulties of operation and inability to get cars. It appears that the shipments were but 27 per cent of the ratings.

The junction-point operators insist that the rating of a mine for a given month should be determined by dividing the total tonnage loaded and shipped during the previous month by the number of hours the mine was worked in that month, and multiplying that result by the number of hours in the standard working day; this rating to be revised monthly. The local operators, excepting those in the Kentucky field, favor the same hourly basis and monthly revision, but think that the tonnage considered should be only that shipped via the Illinois Central.

The local operators in the Kentucky field urge a rating based upon the shipments over the Illinois Central for an extended period of time, excluding the time during which a mine is shut down for 15 or more consecutive days, and providing that if a mine secures a new contract extending over a period of four months or more, such additional tonnage will be added to the established rating.

The operators of the mines which have outlet by river support the position of the junction-point operators.

The Illinois Central contends for a rating based upon commercial capacity, as shown by shipments over the Illinois Central, with suitable allowance for increased demand in the winter season.

The Illinois Central and some of the Kentucky operators say that in determining mine ratings the number of working days should be considered, while the remainder of the operators, both joint and local, insist that only the number of days or hours which the mine is actually worked should be considered. A mine may be idle for a substantial period, due to breakdown, accident, repairs or reconstruction, or for lack of orders. If a system of rating based upon daily production were adopted, it would perhaps be proper to take no cognizance of a few occasional idle days, but it would manifestly be improper in determining a mine's rating to include substantial periods of idleness.

Under the hourly basis of rating, if a junction-point mine produces 1,200 tons, 800 of which are shipped over the Illinois Central and 400 over some other line, the 1,200 tons would be divided by the number of hours worked in producing it to determine the hourly capacity of the mine, and that hourly capacity would be multiplied by the recognized number of working hours in a day, 8 or 10 as the case may be, to determine the daily rating of the mine. If the mine were worked 8 hours in producing 1,200 tons, its hourly capacity would be 150 tons, which multiplied by 8, the hours in a standard working day, would develop a daily capacity of 1,200 tons, which is the rating that should be given to it by the Illinois Central, according to the insistence of the junction-point operators.

The Illinois Central and the local operators contend that only the tonnage shipped via the Illinois Central should be taken into consideration. Using the same example, the 800 tons shipped via the Illinois Central would be divided by the 8 hours which the mine was worked, developing an hourly capacity of 100 tons, or a daily capacity of 800 tons, which is the rating the Illinois Central would give it. It will be seen that the carrier and the local operators would include in the computation the hours which the mine was worked in producing the tonnage shipped over some other road, while excluding the tonnage produced during those hours because it was not shipped over the Illinois Central.

Practically all of the operators approve the hourly basis for determining the mine's capacity and rating, and the Illinois Central's principal witness stated that this system would be just as good as any other if the reports of production and hours worked were made in a way that would require accuracy. This is answered by showing that the operators post at the pit mouth each day a statement of the tonnage produced and the hours worked, upon which statement the pay of the employees is based. The operators announce a willingness to furnish the Illinois Central copies of such posted statements if they are desired. The Illinois Central objects somewhat to the hourly basis, because on a three days' test it was found that it could be manipulated. It argues that a rating based solely upon shipments over its road would, from the records of the mine and of the railroad, give an infallible check. It can hardly be said that a three days' test, at a time when no precautions against manipulation had been provided, is a fair test of the plan.

In opposition to a rating based upon physical capacity the Illinois Central shows that if all the mines on its system were worked each day during the year and each produced its rated physical capacity, they would produce a total of 36,135,078 tons, but that all of the mines on the system loaded and shipped but 9,769,158 tons, or 27 per cent of their rated capacity. These figures were taken for the most recent 12 months' continuous period when both the railroad and the mines were free from strikes and attendant interruptions. There was during that period a shortage of cars for but three months, the winter being unusually mild and the shipments lighter than normal. The tonnage produced by mines whose entire output is taken by the railroad for fuel was not included. It is suggested that these figures throw light upon the fact that the railroad is unable at times to furnish more than 35 or 40 per cent of the cars ordered. This showing demonstrates the incorrectness of the ratings that have been in force, but is by no means conclusive against any fair, equitable, and nondiscriminatory basis that may be established.

It appears that the Illinois Central has not followed the custom of advising the operators each day as to the probable available car supply for the following day, as is done on other roads serving the same junction-point mines. The junction-point operators aver that if that information is furnished they will be able to, and will, order only such cars as they need for Illinois Central shipments, and that thus the probability of a junction-point mine ordering from the carriers that serve it a total number of cars in excess of its possible capacity will be avoided. The justness of this criticism is admitted, and steps have been taken to furnish that information.

Each of the coal traffic officers of other roads, who testified in this proceeding, thinks that the system in force on his line is the correct one, and apparently those systems are generally satisfactory to the operators served by those lines. But the system is not the same on two or more of those roads.

In *Powhatan Coal & Coke Co. v. N. & W. Ry. Co.*, 13 I. C. C., 69, we considered a system of mine ratings based wholly upon the number of coke ovens erected by the mine company. It appeared that many coke ovens had been built for the sole purpose of increasing the rating of the mine and without any intention of using them for producing coke. That system was condemned, but no particular system was prescribed. The present system in force on the Norfolk & Western is termed by its traffic officer as a "rated capacity basis." The rating of a mine represents its capacity for producing and loading coal into cars in a working day's time. Past performances are not considered. Distribution of cars is made upon the basis of the tonnage which the shippers have to offer at that time.

In the *Hillsdale case*, *supra*, we considered the plan in effect on the Pennsylvania Railroad. Under that plan the physical capacity of the mine and its commercial capacity, tested by the shipments made during the preceding 12 months were added together and divided by two, the ratings thus established being subject to revision quarterly. Complainant there insisted that the physical capacity of a mine is the sole and only proper basis for rating, which contention we held to be untenable, saying:

Speaking in precise terms, it is of no real concern to a carrier how large a particular mine may be and what are its possibilities in the way of daily output, except as those factors may afford some measure of what its actual shipments will be. The utmost obligation that the law lays upon a carrier is to equip itself with sufficient cars, not to meet the hopes and expectations of the owner of the mine as expressed in its physical development, but to meet his actual shipments.

In *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C., 86, we indicated the view that the method of rating mines based upon a combination of their physical and commercial capacities more closely

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approximates their actual requirements than a system based only upon physical capacity.

In the *Rail & River* and *Hillsdale* cases the fundamental question was that of car distribution which was affected by other practices complained of aside from the bases of mine rating.

Under the present plan on the Baltimore & Ohio the shipments made by the mine during the preceding period of full car supply are ascertained. The average daily shipment of the month of largest shipment is taken as the rating, to which is added 10 per cent for expansion in the winter period. The rating so fixed is not changed during the car-shortage period.

The several cases in which we have more or less directly considered this question show that in no two instances are the systems of rating, or the contentions of the coal operators, alike. Each coal field and each system of railroad has its individual peculiarities. A plan that works with entire satisfaction on one road might and doubtless would be unsatisfactory on another road. Some railroads, for instance, the Norfolk & Western or the Baltimore & Ohio, transport large quantities of coal to tidewater. While there is frequently more or less delay to equipment in getting the coal loaded into vessels, the cars do not pass off the line of the railroad or out of its possession. The same is true as to other roads which transport large quantities of coal to the lake ports for transshipment by water. We do not understand that the Illinois Central moves any important amount of coal to any port for transshipment by water. The shipments via its line are for its own use or for the communities and manufacturing plants along its line, or are destined to points off its line. They are largely of coal for domestic uses.

In *Missouri & Illinois Coal Co. v. I. C. R. R. Co.*, 22 I. C. C., 39, we considered a rule issued by the Illinois Central prohibiting the loading of its cars with coal to points on or reached via certain named railways. This expedient was resorted to by the Illinois Central because so much of its equipment was loaded for points on other lines of railroad, and its inability to secure return of its cars. We there said:

In following this procedure it was acting paternally and no doubt in good faith; it was attempting to cure in an emergency, a situation arising out of its own delinquency in the past, for if it had made proper conditions attaching to the return movement of its cars no such condition would have arisen as made this embargo necessary. The Illinois Central sought to protect "its own people," but in contemplation of the law there is no such thing as local traffic which enjoys rights superior to through traffic. There can be no discrimination or preference in favor of the Illinois coal buyer as against the Missouri buyer, although one may be local to the Illinois Central and the other may be on the line of a connecting carrier.

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We held that the through routes should be restored. It there appeared that in 1910 the Illinois Central owned some 22,500 coal cars, of which from 6,000 to 8,000 were away on the lines of other roads.

Counsel for the local operators suggests that the underlying difficulty in the instant case is failure of the Illinois Central to discharge its common carrier duty of providing itself with sufficient equipment to meet all demands made upon it for transportation. During at least one-half of each year the Illinois Central is able to furnish all the cars that can be used.

In *Interstate Commerce Commission v. I. C. R. R. Co.*, 215 U. S., 452, it was held that a railroad's car supply may be legally sufficient and yet not sufficient to meet the demands of shippers in unforeseen contingencies, fluctuations in the demand for transportation, or unavoidable absence of equipment off the line.

If the carriers were to equip themselves with cars, motive power, tracks, and terminals so as to meet at any moment the maximum demand for transportation, the shipping public would be obliged to pay interest upon that investment, and for the maintenance of those facilities. The question of the sufficiency of the Illinois Central equipment is, however, not in this case. What we are to here determine is an equitable system of mine ratings upon which equitable distribution of the available equipment may be made when there is not sufficient to meet all demands.

The Illinois Central argues that the method of rating mines on the basis of the coal hoisted per hour is a purely physical capacity basis just as much as one based upon the physical capacity of the mine, its equipment, the number of men employed, the thickness of the seam, etc. We do not agree with this suggestion. The one is a measure of the ability of the mine to hoist and load coal under conditions as they exist, the other is an ascertainment of the possible physical capacity if all of those possibilities were developed. It is true that a rating fixed upon the basis of the hours worked and the tonnage hoisted would give to the mine working but a few hours and producing a given number of tons per hour the same rating as to the mine which worked every day during the month and produced an average of the same number of tons per hour. The mine that worked but a few hours would get the rating, but it would not get cars thereunder unless it shipped the coal. A junction-point mine working 8 hours and producing 1,000 tons of coal, of which 500 tons are shipped via the Illinois Central and 500 tons via some other road, is certainly not worked 8 hours in producing the tonnage shipped over the Illinois Central.

Under the Illinois Central plan the mines that have river outlet are rated as junction-point mines. If during the season of open
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navigation such a mine shipped its entire output by water it would have made no shipments over the Illinois Central and therefore have no basis for rating for the winter, and when navigation closed it would be left without any means of transportation.

Under the same plan, if a junction-point mine had a contract for its entire output via another line during the summer and that contract expired as winter approached and the mine was able to make a contract for the delivery of its output for succeeding months via the Illinois Central it would have no rating, and therefore would be denied the privilege of shipping over the Illinois Central. This seems to us as unfair as it would be to deny facilities of transportation to a mine in the winter season because it had been shut down in the summer.

Again, a mine would have a rating based only upon its shipments via the Illinois Central; it would in a period of car shortage be unable to get the cars that it desired, and therefore its shipments via the Illinois Central would be still less. But such reduced shipments would be taken as the basis of revision of its rating, inevitably leading to a constantly shrinking rating.

If the Illinois Central had a 50-per-cent car supply and the junction-point mine should run half a day and then shut down, its rating on the Illinois Central would not be impaired. If, however, it should run the remaining half day and ship that output over another road, its rating on the Illinois Central would be reduced one-half.

If a local mine had a capacity of 500 tons daily, and during the period of full car supply which the Illinois Central plan proposes to take as the basis of rating, it should ship a total of 50,000 tons, its daily rating, based upon the total number of working days in the full car supply period, would be 324 tons, and that would be its rating for the period of car shortage. If another local mine had a daily capacity of 3,000 tons, and during the same period of full car supply should ship the same aggregate amount, to wit, 50,000 tons, it also, on the same basis, would have a daily rating for the car-shortage period of 324 tons. Thus the two mines, with respective daily capacities of 500 tons and 3,000 tons, would have the same ratings.

It can hardly be said that a railroad is a common carrier only for those who have been accustomed to patronize it. That theory was rejected by the Commission in *Riddle, Dean & Co. v. N. Y., L. E. & W. R. R. Co.*, 1 I. C. C., 594, 603, where it was said:

It is in contravention of the statute for a common carrier to refuse a shipment upon the ground that regular patrons desire to use all the facilities at hand, and to appropriate to the uses of the latter the entire available equipment.

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In *Cardiff Coal Co. v. C. M. & St. P. Ry. Co.*, 13 I. C. C., 460, and in *Star Grain & Lumber Co. v. A. T. & S. F. Ry. Co.*, 14 I. C. C., 364, we held that the carrier may not, by refusing reasonable and proper through routes and joint rates, determine the markets in which its shippers shall sell their products. We think that this principle also extends to the proposition that the carrier may not, by withholding its equipment or facilities, dictate or control the markets which shippers shall seek or enjoy at certain periods because such shippers have not during other periods used that carrier's line. Neither a passenger nor a shipper may be refused the right to ride on or ship over a common carrier's line because such passenger or shipper has been accustomed to travel or ship in another direction, or over the lines of some other carrier.

Here we have practically all of the operators agreed upon the desirability of the hourly production basis for ratings. The only objections that have been voiced against it by the railroad are, we think, fully met by the suggestions of the operators, hereinbefore noted. In approving this basis in this instance we do so only upon the facts and under the conditions here presented. We are not to be understood as indicating approval of its adoption in places where it would not suitably and properly meet the conditions, or where it would be objectionable to the great majority of those affected thereby.

We think that under the circumstances of this case the junction-point mine and the mine that has river outlet are entitled to ratings by the Illinois Central the same as if they were not served by another carrier or outlet, and that the hourly basis contended for by the operators should be adopted by taking the total tonnage produced and shipped by the mine during the month and dividing it by the number of hours the mine is worked in producing it, and multiplying that quotient by the number of hours in the recognized working day, 8 or 10 as the case may be, thus determining the daily rating of the mine. The ratings so determined should, in the same way, be revised monthly during the car-shortage period, and the rating had by a mine during the last month of the car-shortage period should be its rating for the first month of the next car-shortage period. Coal disposed of locally and not shipped should be excluded in computing the mine's rating. The operators should furnish the Illinois Central with copies of their daily statements of the hours worked and the tonnage produced, or, if that is not desired, should give the Illinois Central free access thereto. Cars left over empty or loaded and not billed should be counted against the distributive share of the mine the following day or days. The Illinois Central should furnish daily to the operators a statement of the probable available car supply for the following day.

It is admitted that the junction-point mine enjoys advantages not possessed by the local mine, but it is stated that the coal lands of the junction-point mine cost twice as much as those available to but one road. Owners of junction-point mines have expended large sums in order to secure connections with more than one road. The junction-point mine has available a more extensive and more varied market for its coal. It may at times be able to dispose of its product upon the second line of railroad, while the mine local to the first road is unable to market its output. In case of car shortage the junction-point mine is able to select the outlet which affords the best and most liberal means of transportation. These are important advantages to which the junction-point mine is entitled and in the reasonable enjoyment of which it should be protected.

The purpose of fixing a rating for a mine is to determine the basis upon which it shall share in the available equipment when there is not sufficient to meet the demands of all the mines. If the carrier is unable to supply all of the equipment desired by the mines which it serves, it becomes necessary to place some restriction upon all of them, and in order to do this impartially the practice of rating the mines and of distributing the available equipment pro rata on the basis of such ratings has been adopted. It is a practice in connection with the movement of interstate traffic which is within the jurisdiction of the Commission as to its reasonableness and its discriminatory effect, if any. It should therefore be viewed from every angle and in all of its details, with the purpose of ascertaining its ultimate effect. If unreasonableness or unjust discrimination are found, we have the power and it is our duty to correct the fault.

The junction-point mine has a right to ship its output via either of the lines serving it. It may on any day tender its entire output to either of such lines and is entitled to its share of the available equipment on that basis. But it should not be permitted to tender its full capacity to each of two or more roads on the same day and thus obtain cars from each of the roads on the theory that it has ready for shipment via each road the total capacity of its mine.

Having the right to assert its full capacity against the Illinois Central on any day, it follows that the junction-point mine must have a rating on the Illinois Central equal to its full capacity or it would not be able to secure its quota of the available cars on the day when it elects to assert its full capacity against that line.

Manifestly there ought to be uniformity in ratings and in the rules of car distribution to junction-point mines in a given territory. Reference to the mine-rating rules of the principal carriers that serve the junction-point mines here considered shows that no two of them

have the same ratings or rules. No two of them treat the junction-point mines in the same way.

If a junction-point mine of 3,000 tons capacity has contracted for the shipment of 2,000 tons per day over one of the lines serving it, it of course can not ship more than 1,000 tons per day over the other line. If it is unable to secure from the first line cars for more than 1,000 tons and still is able to produce 3,000 tons, it has 2,000 tons which it desires to ship over the second line. Should it, under those circumstances, be permitted to assert its full capacity of 3,000 tons against the second line and be given cars on that basis?

In the annually recurring period of shortage of coal cars there is a great demand for coal and, generally speaking, each mine, whether junction-point or local, is able to sell all the coal it can mine and ship. If the junction-point mine, served by two lines, is permitted to assert its full capacity against each of those lines, it is able to secure 100 per cent of its needs whenever each of those lines has as much as a 50 per cent car supply. If it is served by three lines, it would be able to secure 100 per cent of its needs when each of the lines had a $33\frac{1}{3}$ per cent car supply. It would thus be able to work substantially full time, while the nearby local mine would be able to work only one-half or one-third time, and the result would be that miners and laborers would seek employment with the junction-point mine where they could work full time rather than with the local mine that was able to work but part of the time. This makes it impossible for the local mine owner to maintain an organization or to work his mine efficiently or economically, and imposes upon him an extra cost in the production of coal.

In *Traer v. C. & A. R. R. Co.*, 13 I. C. C., 451, we held that privately owned cars and specially consigned cars for railroad fuel should be delivered to the mine owning them or to which they were consigned, but that they should be counted against the quota of that mine in the distribution of available equipment, and if the number of privately owned or specially consigned cars so given to a mine equaled or exceeded its quota of the available equipment on a given day, it should be furnished no additional cars. This was upheld by the Supreme Court in *Interstate Commerce Commission v. I. C. R. R. Co.*, 215 U. S., 452.

Each of the lines serving the junction-point mine would be obliged to count against its distributive share all privately owned or specially consigned cars. It seems therefore that in order to avoid unjust discrimination in the distribution of cars, some consideration must be given to the cars which the junction-point mine receives from another road.

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The junction-point mine having been accorded a rating equal to its full capacity, which protects its right to assert that full capacity against the Illinois Central on any day, it is necessary in order to avoid unjust discrimination in its favor as compared with the local mine to somewhat limit its power to assert that capacity against two or more carriers at the same time. This might perhaps be done by deducting from its rating capacity for purposes of distribution on that day the tonnage for which it is furnished cars by another carrier or other carriers, but if that is fair and reasonable as to one carrier it must be equally so as to the other carriers which serve the same mine, and the difficult question would be raised as to which of them should shrink its allotment because the other had furnished cars.

It might be apportioned in alternate weeks or on alternate days if the mine operators were able to know from week to week or from day to day just what shipments they would desire to make over each road or what cars would be available. The difficulty is that in periods of car shortage the mine presumably has more orders than it can fill. It desires to fill some in preference to others and is obliged to regulate its shipments according to the cars furnished.

It seems more practicable and reasonable to determine the distribution to the junction-point mine as compared with the local mine upon a percentage basis which we think can be fairly fixed without ignoring or unjustly circumscribing the natural advantages or the rights of either the junction-point or the local mine.

It would be unjustly discriminatory in favor of the junction-point mine and unduly prejudicial to the local mine for respondent to give the junction-point mine cars based upon its full capacity on days for which it ordered cars for part of its output from other roads. It would be unjustly discriminatory against the junction-point mine not to give reasonable recognition to its natural advantages of location. We think that on days for which it orders no cars from any other carrier, the junction-point mine should be given its prorata of cars by the Illinois Central on the basis of its full rating; that on a day for which it orders cars from one other road, its rating on the Illinois Central for that day should be 75 per cent of its full rating; and that on a day for which it orders cars from two other roads, its rating on the Illinois Central for that day should be 50 per cent of its full rating. Respondent's agents where the junction-point mines are located should ascertain from agents of other carriers serving the same mine as to its orders for cars from such other carriers, and see that this rule is observed.

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The good faith of the Illinois Central in submitting this question for determination is apparent. There are other features of the rules which the parties said at the hearing they could agree upon after the basis of ratings was decided. We therefore think that no order is now necessary to bring about the early adoption of the views which we have expressed.

INVESTIGATION AND SUSPENSION DOCKET No. 106.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FURNITURE IN CARLOADS BETWEEN POINTS IN ARKANSAS, COLORADO, FLORIDA, KANSAS, LOUISIANA, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, SOUTH DAKOTA, WASHINGTON, D. C., AND OTHER INTERSTATE POINTS.

Submitted November 21, 1912. Decided December 2, 1912.

The rates herein advanced by the carriers found not unreasonable. Orders of suspension vacated.

E. L. Ewing for National Association of Furniture Manufacturers, of Grand Rapids, Mich., and Furniture Manufacturers' Association of Grand Rapids.

J. S. Linton for National Association of Furniture Manufacturers.

C. S. Bather for Rockford Manufacturers and Shippers Association.

J. T. Ryan for Southern Furniture Manufacturers Association.

E. W. Ploeger for Globe Bosse World Furniture Company.

C. D. Mowen for Fort Smith Traffic Bureau.

F. H. Wood, H. A. Scandrett, J. G. Wilson, H. G. Herbel, F. G. Wright, W. F. Dickinson, W. T. Hughes, T. J. Norton, J. L. Coleman, J. R. Christian, J. W. Allen, C. C. Wright, and A. H. Lossow for respondents.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The rates here involved are those upon furniture. The territory of destination is the state of Texas. The territory of origin lies west of Atlantic seaboard territory and east of Colorado common
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points. The advance from St. Louis, Mo., to Texas common points is 6 cents per 100 pounds, from 79 cents to 85 cents, with a corresponding increase to other Texas stations.

Furniture manufacturers in all parts of the territory involved protested against the advance and were represented upon the hearing. They agree that no question of relative rates is involved, that if the advance from St. Louis is proper then all the other advances necessarily and properly follow. The only question for our consideration therefore is whether the advance from St. Louis to Texas common points from 79 cents to 85 cents is lawful.

Going back to 1895 we find in effect the third-class rate from St. Louis to Texas common points, which was then 97 cents, with a minimum of 14,000 pounds. The minimum was then, and for some years afterwards, the same for cars of any size. Furniture is a bulky article, some kinds of which can not be loaded to the minimum and many kinds of which can be so loaded with difficulty. This led shippers to demand larger cars and induced carriers in the competition for business to meet this demand by the construction of what were known as furniture cars, with a length of from 40 to 50 feet. The road which could offer to the intending shipper the largest car usually obtained the business, in case of the lighter and more bulky varieties of furniture.

Since some lines had such equipment in much greater abundance than others, those lines not furnished with the larger cars were compelled to compete for the business by reducing the rate and also the minimum. This competitive situation led also to the adoption of what is known as the two-for-one rule. As a result a varying minimum was finally established, the third-class rate being applied to a minimum of 10,000 pounds while the class-A rate was applied to a minimum of 14,000 pounds.

All this was extremely unsatisfactory both to the shippers and to the carriers, and in 1908 several conferences were had for the purpose of agreeing upon a satisfactory minimum. As a result of these conferences it was determined that the minimum should be varied with the size of the car and such minima were established. Thus, the minimum for a car 36 feet in length was 12,000 pounds, for one 40 feet in length 16,000 pounds, and for one 50 feet in length 20,000 pounds. These minima were accepted as satisfactory to both railroads and shippers. They were published, have ever since been, and are still in effect, nor is any question of minimum involved in this proceeding.

At the time of the final conference between shippers and carriers as to the minimum the class-A rate from St. Louis to Texas common points was 85 cents per 100 pounds and it was agreed at this con-

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ference that this rate of 85 cents should be established. The carriers insist that the agreement was for a rate of 85 cents, while the shippers assert that the agreement was that the class-A rate should apply.

In 1907 class rates from St. Louis to Texas common points had been advanced, the class-A rate having been increased from 79 cents to 85 cents. That advance had been attacked in a proceeding which was pending before the Commission at the time of the final conference above referred to. Subsequently the Commission held in deciding this case that the class-A rate should be reduced from 85 to 79 cents and it was so reduced by the carriers. *Railroad Commission of Texas v. A., T. & S. F. Ry. Co.*, 20 I. C. C. 463.

While the carriers understood, according to their claim, that 85 cents was to be the furniture rate from St. Louis to Texas common points, they carried that rate as a matter of convenience as a class rate, with the necessary exceptions. The effect of reducing the class-A rate was therefore to reduce the rate on furniture from 85 cents to 79 cents. That reduction went into effect May 15, 1911, and is still effective, pending the suspension of the tariffs under consideration.

When the carriers came to realize that the effect of reducing the class rate had been to work a reduction in the furniture rate they proceeded to file these tariffs which are under suspension, restoring the rate from 79 cents to 85 cents. The furniture shippers who were present at the trial stated that according to their understanding carriers had agreed to apply the class-A rate from St. Louis to Texas common points; that in their opinion this rate was sufficient, but that they desired to pay reasonable transportation charges and were satisfied to pay the higher rate if in the opinion of the Commission that rate was the proper one. The reasonableness of the 85-cent rate from St. Louis to Texas common points is therefore the only question before us.

It is usually the case where furniture is to be transported long distances from the point of origin to the market of consumption that special rates lower than those applicable to furniture in general are made for the carriage of particular kinds of furniture which load heavier than is possible with the ordinary furniture shipment, and this is true of the present case. Rates are on file from St. Louis to Texas common points lower than 79 cents which apply under a higher minimum to particular kinds of furniture.

The average value of a carload of furniture was stated to be from \$1,000 to \$1,700. The minimum for a standard car 36 feet in length is 12,000 pounds, but the average loading exceeds this by 2,000 to 3,000 pounds. In the *Texas Advance Rate case* above referred to it was said that the average haul from St. Louis to Texas common points

was approximately 800 miles. Upon that basis the advanced rate would yield a car-mile earning of from 17 to 20 cents. Numerous other commodities were called to the attention of the Commission which under the average loading at the rate applicable from St. Louis to Texas common points pay a car-mile earning in excess of that on furniture. Indeed, we have been able to find but three or four commodities which yield a car-mile earning that is as low or less.

An examination of furniture rates applicable in other parts of the country where western classification is in force shows that those rates are almost without exception in excess of the class-A rate. This appears from the following table, in which rates from St. Louis to certain points are given, comparing the furniture rate and class A:

From St. Louis to—	Furniture.	Class A.
Minneapolis.....	42	26
Denver.....	102½	74
Salt Lake City.....	117½	111
San Francisco.....	220	172

Upon consideration of the whole situation we are satisfied that a rate of 85 cents applied to the transportation of furniture with the minima now in force and continued by the tariff under suspension is not unreasonable and the order of suspension will therefore be vacated and the suspended schedules permitted to take effect.

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No. 4334.

WHARTON STEEL COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

No. 4390.

B. NICOLL & COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY ET AL.

Submitted May 15, 1912. Decided November 12, 1912.

The complainants assail the rates on iron ore in carloads from certain points in northern New Jersey and southeastern New York to the consuming furnaces in the Lehigh and Schuylkill Valley districts of eastern Pennsylvania; also the rate from Keene's, N. Y., to Wharton, N. J.; *Held:*

1. That from a consideration of the record and from the tests and comparisons made by the aid of averages obtainable from the annual reports of the defendants, the Commission is unable to find that the rates, as a whole, are unreasonable in and of themselves.
2. That some of the rates are relatively unreasonable and certain readjustments should be made and inequalities and inconsistencies in the schedules removed.
3. That the rate from Keene's to Wharton was not unreasonable as applied to complainants' shipments, and following *Southern Pacific Co. v. I. C. C.*, 219 U. S., 433, the Commission is unable to hold that the defendant damaged the complainant by reason of defendant's action in canceling the rate of \$1.35 and restoring the rate of \$1.50, now in force.

William A. Glasgow, jr., and Robert D. Jenks for complainants.

J. L. Seager and A. S. Learoyd for Delaware, Lackawanna & Western Railroad Company.

Ernest S. Ballard and Clyde Brown for New York Central & Hudson River Railroad Company.

H. A. Taylor and T. H. Burgess for Erie Railroad Company and New York, Susquehanna & Western Railroad Company.

William L. Kinter for Philadelphia & Reading Railway Company.

Jackson E. Reynolds for Central Railroad Company of New Jersey.

John J. Beattie for Lehigh & Hudson River Railway Company.

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REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

These two cases involve substantially the same subject matter and were heard and argued together. The petitions assail the rates published by defendants for the transportation of iron ore in carloads from certain points in northern New Jersey and southeastern New York to the consuming furnaces in the Lehigh and Schuylkill Valley districts of eastern Pennsylvania, hereinafter designated as the eastern furnaces.

The Wharton Steel Company, whose complaint was filed August 23, 1911, is engaged in the business of mining and selling iron ore. It seeks reparation in the sum of \$3,990.50 for alleged unlawful rates imposed upon shipments from Wharton, N. J., to Birdsboro, Pa., and from Keene's, N. Y., to Wharton, N. J. The basis of the claim covering the latter movement differs from that covering all the other shipments in question and therefore such claim will be discussed separately in this report.

B. Nicoll & Company, which is the trade name under which B. Nicoll conducts the business of buying and selling iron ore and other commodities, asks the Commission, in its petition, filed September 2, 1911, to award it reparation in the sum of over \$38,000 upon basis of what it considers just and reasonable rates to have applied on shipments from Ringwood and Wharton, N. J., and Fort Montgomery, Sterlington, and Salisbury Center, N. Y., to the furnaces at Pottstown, Coatesville, and other Pennsylvania points in the before-mentioned districts. At the hearing counsel for this complainant withdrew the attack on the rate from Salisbury Center and the claim for reparation on shipments from that point.

The following statement shows the traffic involved in the reparation claims:

TRAFFIC INVOLVED IN REPARATION CLAIM OF B. NICOLL & COMPANY.

Origin.	Destination.	Gross tons.	Rate imposed per gross ton.
Ringwood.....	Pottstown.....	26,344.85	\$1.20
Do.....	Coatesville.....	22,997.72	1.20
Do.....	Harrisburg.....	55.85	1.50
Do.....	Parryville.....	504.78	1.05
Do.....	Birdsboro.....	294.82	1.20
Do.....	Catasauqua.....	3,932.09	.95
Wharton.....	do.....	6,294.21	.70
Do.....	Harrisburg.....	719.85	1.07
Do.....	Coatesville.....	3,669.72	.90
Do.....	Pottstown.....	1,555.62	.88
Fort Montgomery.....	do.....	16,485.07	1.30
Do.....	do.....	1,183.47	1.50
Do.....	Catasauqua.....	1,039.88	1.20
Do.....	Wharton.....	1,149.09	1.20
Do.....	Parryville.....	236.12	1.25
Do.....	Coatesville.....	27,575.49	1.45
Do.....	Harrisburg.....	1,177.50	1.45
Do.....	Birdsboro.....	3,918.84	1.45

¹ This rate reduced to \$0.95 effective February 15, 1912.

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TRAFFIC INVOLVED IN REPARATION CLAIM OF B. NICOLL & COMPANY—Continued.

Origin.	Destination.	Gross tons.	Rate imposed per gross ton.
Sterlington.....	Wharton.....	11,383.83	\$0.60
Do.....	Philipsburg.....	11,643.31	.92
Do.....	Catsaunus.....	11,719.40	.97

TRAFFIC INVOLVED IN REPARATION CLAIM OF WHARTON STEEL COMPANY.

Wharton.....	Birdsboro.....	19,678.27	\$0.86
Keene.....	Wharton.....	1,277.14	1.50

The petitions contend that these rates are unreasonably high for the services rendered thereunder and unjustly discriminatory as compared with the rates charged by the defendants for the transportation of iron ore from Buffalo and Port Henry, N. Y., to the same destinations. They assert that the existence of such rates has deprived the iron mines located adjacent to or in the immediate locality of the points of origin in question of the advantages to which they are entitled by reason of their close geographical proximity to the consuming furnaces. It is not contended that the rates from Buffalo and Port Henry are too high or should be changed, but it is claimed that the rates complained of are unreasonable as compared therewith. Pointing to the much longer haul from the latter points the complainants admit the correctness of the principle that the carriers are entitled to a somewhat higher revenue per ton per mile on short hauls than on longer hauls, but insist that the application of this principle does not warrant charging them rates so much in excess per ton per mile of the rates applied for the longer hauls from Buffalo and Port Henry. In other words, the charge of discrimination is predicated on the allegation that the rates assailed are relatively unreasonable rather than that the Buffalo and Port Henry rates are unduly preferential.

The carriers deny the contentions of the complainant and assert that the rates attacked are reasonable in and of themselves, and are not unreasonable or unjustly discriminatory as compared with the rates from Buffalo and Port Henry when due attention is given to the diverse conditions surrounding the transportation of ore from the points in question.

Of the ore included in the shipments involved, that moving from Ringwood was mined at the Peters mine, located about 2 miles from that point; the Forest of Dean mine originated the ore shipped from Fort Montgomery, a near-by point on the west bank of the Hudson River; the ore from Sterlington came from the Sterling mine, about 2 miles distant; and the Hibernia and Hurd mines fur-

nished the ore transported from Wharton. The Hibernia mine is 12 miles from Wharton, and the Hurd mine is very close thereto.

Ringwood is on the Ringwood branch of the New York & Greenwood Lake division of the Erie Railroad; Sterlington is on the main line of the Erie Railroad, a few miles west of Suffern, N. Y.; Fort Montgomery is on the West Shore line of the New York Central & Hudson River Railroad; and Wharton is on the Wharton & Northern Railroad, High Bridge branch of the Central Railroad of New Jersey, and the Delaware, Lackawanna & Western Railroad.

According to the statement submitted by the complainants the actual movement of the ore shipments was over the following lines:

Ringwood to Pottstown, Erie Railroad and Pennsylvania Railroad.

Ringwood to Coatesville, Harrisburg, and Birdsboro, New York, Susquehanna & Western Railroad, Lehigh & Hudson Ry., Central Railroad of New Jersey, and Philadelphia & Reading.

Ringwood to Parryville, Erie R. R., N. Y., S. & W. R. R., L. & H. Ry., and C. R. R. of N. J.

Ringwood to Catasauqua, Erie R. R., N. Y., S. & W. R. R., L. & H. Ry., Lehigh Valley Railroad. Part of the shipments between these points also moved over the following route: Erie R. R., N. Y., S. & W. R. R., Wharton & Northern Railroad, C. R. R. of N. J.

Wharton to Catasauqua, C. R. R. of N. J.

Wharton to Harrisburg, Coatesville, and Pottstown, C. R. R. of N. J. and Philadelphia & Reading Ry.

Wharton to Birdsboro, C. R. R. of N. J. and P. & R. Ry.

Fort Montgomery to Pottstown, West Shore R. R. and Pa. R. R. Some of the shipments between these points moved via the Fort Montgomery and New York Barge line, C. R. R. of N. J., and P. & R. Ry.

Fort Montgomery to Catasauqua, Wharton, and Parryville, West Shore R. R. and C. R. R. of N. J.

Fort Montgomery to Coatesville, Harrisburg, and Birdsboro, Fort Montgomery and New York Barge line, C. R. R. of N. J., and P. & R. Ry. Other shipments between these points moved via West Shore R. R. and Pa. R. R.

Sterlington to Wharton, Erie R. R., N. Y., S. & W. R. R., and W. & N. R. R.

Sterlington to Phillipsburg and Coatesville, Erie R. R., L. & H. Ry., and Lehigh Valley R. R.

It will be noted that except for the movement from Wharton to Catasauqua the transportation in question involved the services of from two to five carriers for each shipment.

Following is a statement based on complainant's exhibits of the rates per ton mile between the points of shipment:

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Origin.	Destination.	Rate.	Distance.	Rate per ton-mile.
			<i>Miles.</i>	<i>Mills.</i>
Ringwood.....	Birdsboro.....	\$1.20	143	8.39
Do.....	Catasauqua ¹.....	.86	101	9.40
Do.....	do. ².....	.96	100	9.60
Do.....	Coatesville.....	1.24	173	6.96
Do.....	Harrisburg.....	1.50	187	8.02
Do.....	Parryville.....	1.06	121	8.67
Fort Montgomery.....	Birdsboro.....	1.45	174	8.33
Do.....	Catasauqua.....	1.20	137	8.78
Do.....	Coatesville ³	1.45	163	8.89
Do.....	do. ⁴	1.45	204	7.10
Do.....	Harrisburg ⁵	1.45	226	6.33
Do.....	do. ⁶	1.45	228	6.80
Do.....	Parryville.....	1.25	157	7.96
Do.....	Pottstown ⁷	1.30	172	7.65
Do.....	do. ⁸	1.30	166	7.87
Do.....	do. ⁹	1.50	188	7.96
Do.....	Wharton ¹⁰	1.20	122	9.83
Do.....	do. ¹¹	1.20	85	14.11
Sterlington.....	Catasauqua.....	.97	118	8.22
Do.....	Phillipsburg.....	.92	97	9.48
Do.....	Wharton.....	.60	62	11.53
Wharton.....	Catasauqua.....	.70	67	10.44
Do.....	Coatesville.....	.90	129	6.47
Do.....	Harrisburg.....	1.07	152	7.03
Do.....	Pottstown.....	.86	117	7.52
Do.....	Birdsboro.....	.86	108	7.96

¹ Via Sparta Junction and Lehigh Valley Railroad.

² Via Green Pond Junction and Lehigh Valley Railroad.

³ Via Pennsylvania Railroad.

⁴ Via barge and Philadelphia & Reading Railway.

⁵ Via Pennsylvania Railroad.

⁶ Via barge and Philadelphia & Reading Railway.

⁷ Via Pennsylvania Railroad.

⁸ Via barge and Philadelphia & Reading Railway.

⁹ Via Central Railroad of New Jersey and Philadelphia & Reading Railway.

¹⁰ Via Central Railroad of New Jersey.

¹¹ Via Erie Railroad.

The complainants submit in comparison with these rates the following rates from Buffalo and Port Henry to the same destinations:

Origin.	Destination.	Rate.	Distance.	Rate per ton-mile.
			<i>Miles.</i>	<i>Mills.</i>
Buffalo.....	Birdsboro.....	\$1.45	424	3.42
Do.....	Coatesville.....	1.45	378	3.83
Do.....	Harrisburg ¹	1.45	312	4.64
Do.....	do. ²	1.45	480	3.02
Do.....	Pottstown ³	1.45	415	3.47
Do.....	do. ⁴	1.45	445	3.26
Do.....	Wharton ⁵	1.45	419	3.47
Do.....	do. ⁶	1.45	418	3.47
Port Henry.....	Birdsboro.....	1.65	428	3.86
Do.....	Catasauqua.....	1.60	379	4.22
Do.....	do. ⁷	1.50	354	4.23
Do.....	Coatesville ⁸	1.80	426	4.22
Do.....	do.....	1.80	482	3.73
Do.....	Harrisburg.....	1.80	416	4.32
Do.....	Parryville.....	1.60	369	4.46
Do.....	Pottstown.....	1.65	437	3.77
Do.....	Wharton.....	1.80	446	3.58

¹ Via Pennsylvania Railroad.

² Via Erie Railroad.

³ Via New York Central & Hudson River Railroad.

⁴ Via Lehigh Valley Railroad.

⁵ Water transportation, cargo lots, to Elizabethport, N. J.

It is urged by complainants that as a result of this rate adjustment it has been impossible to sell ore from their mines in competition with

the ore from Buffalo and Port Henry and that the prohibitive character of the rates attacked is the real reason why their mines have not been fully developed and the ores more largely used in the eastern furnaces.

The complainants offered no conclusive evidence that their rates, from the standpoint of the cost of the service, are too high. They submitted rate comparisons and attempted to show that there was probably less terminal expense in the traffic from the eastern mines than in the traffic from Buffalo and that the ore from Buffalo has to pass through mountainous country.

The defendants state that the Buffalo rate is a low rate made with reference to the rates on ore from Lake Erie ports to Pittsburgh and points in the Mahoning and Chenango Valleys for the purpose of enabling the eastern furnaces to compete with furnaces at the latter points. They claim that this rate is justified because there is a constant and very heavy tonnage of ore movement to the furnaces, with an equally heavy return haul of coal. The cars used are hopper-bottomed gondolas, which carry anthracite from the Pennsylvania mines to Buffalo. The ore generally moves in train loads, and in the case of the Lehigh Valley Railroad and the Lackawanna Railroad the transportation is entirely over one line. Via the New York Central, as originating carrier, the movement is over two lines—that road and the delivering carrier, which is either the Philadelphia & Reading Railway or the Central Railroad of New Jersey.

The testimony shows that the Port Henry rates, which the complainants also use as a basis of comparison, are governed to some extent by water competition via Lake Champlain, the Delaware & Hudson Canal, and the Hudson River to Elizabethport, Perth Amboy, and Jersey City, N. J. This movement lasts about nine months in the year and embraces the major part of the entire traffic. The movement by rail from Port Henry is usually confined to instances where the consumer desires the ore in carload instead of in cargo lots. It is claimed that this water competition has necessarily tended to keep the Port Henry rates below what they would otherwise have been.

Practically none of the conditions involved in the traffic from Buffalo and Port Henry prevail with respect to the movement from the points involved in the complaint. In contrast to such conditions it appears that the ore movement from the latter points is more or less intermittent and not at all commensurate with that from Buffalo; it is in single cars or a few cars at a time; it involves considerable empty car mileage; and, as before shown, requires the services, except to one point, of from two to five carriers. The defendants show by detailed records of the car movements from Ringwood that this ore occasions a comparatively large amount of empty mileage, and they urge that the differences in density of traffic, the number of carriers

involved in the movements, and in the amount of empty mileage combine to make the haul from the eastern mines relatively more expensive than from Buffalo. The ore movement from Buffalo and Port Henry is apparently not comparable in all respects with that from the points in question in the manner set forth by the complainants. The fact that the total transportation charge from eastern mines to eastern furnaces is much lower than from western mines to these furnaces suggests that the lack of development of eastern mines is due wholly or in part to other causes than the railway rate on ores produced by them. Testimony for petitioners tended to show that unless the price for lake ores exceeded certain levels it would be unprofitable to mine eastern ores and unbusinesslike for eastern furnaces to purchase the latter at the higher prices. The reduction from 80 to 60 cents per gross ton in the railway rate on iron ore from the Mesabi range probably makes the position of the eastern furnaces still more difficult.

We are unable to find from the record in these cases or from the tests and comparisons we have made by the aid of averages obtainable from the annual reports of the carriers that the rates assailed, as a whole, are unreasonable in and of themselves. We are of the opinion, however, that some of the rates are relatively unreasonable and that certain readjustments should be made and inequalities and inconsistencies in the schedules removed. This will involve reductions to some stations and advances to others.

Among the rates which appear to be out of line are the following: The Ringwood rate to Harrisburg is higher than the Fort Montgomery rate to the same destination, although Ringwood is nearer, and the rate from Fort Montgomery to Pottstown seems too high compared with the Ringwood rate to Pottstown. The rate from Fort Montgomery to Wharton is \$1.20 for 125 miles—nearly 1 cent per ton per mile. Coatesville and Pottstown have the same rate from Ringwood, but they are not placed on a parity in shipments from Wharton or from Fort Montgomery. It is not suggested that the adjustment shall be strictly in accordance with mileage. Some of the consuming points have been grouped, and this ignores mileage necessarily to some extent, and the special conditions may necessitate other departures from any uniform scale; but the suggestion may be offered that in the absence of good reasons to the contrary some scheme like the following might be adopted. Assuming a charge of 80 cents per ton for nonhaulage service, irrespective of distance, and a rate of 5.5 mills per ton per mile for the haulage service, the resulting rates are as follows.

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Original destination.	Distance, miles. ¹	Existing rate.	Rate com- posed of 30 cents nonhauilage and 5.5 mills per ton-mile for distance.
From Ringwood to—			
Pottstown.....	152	\$1.20	\$1.14
Coatesville.....	173	1.20	1.25
Harrisburg.....	187	1.50	1.33
Parryville.....	120	.85	.85
Birdsboro.....	143	1.20	1.08
Catasauqua.....	101	.85	.85
From Wharton to—			
Catasauqua.....	66	.70	.65
Harrisburg.....	163	1.07	1.14
Coatesville.....	138	.90	1.04
Pottstown.....	116	.88	.94
Birdsboro.....	108	.86	.89
From Fort Montgomery to—			
Pottstown.....	172	1.50	1.25
Catasauqua.....	140	1.20	1.07
Wharton.....	125	1.20	.99
Parryville.....	159	1.25	1.17
Coatesville.....	204	1.45	1.42
Harrisburg.....	229	1.45	1.56
Birdsboro.....	174	1.45	1.26
From Sterlington to—			
Wharton.....	51	.60	.58
Phillipsburg.....	97	.92	.83
Catasauqua.....	116	.97	.94
From Buftsville to			
Parryville.....	58	.60	.63
Coatesville.....	111	1.00	.91

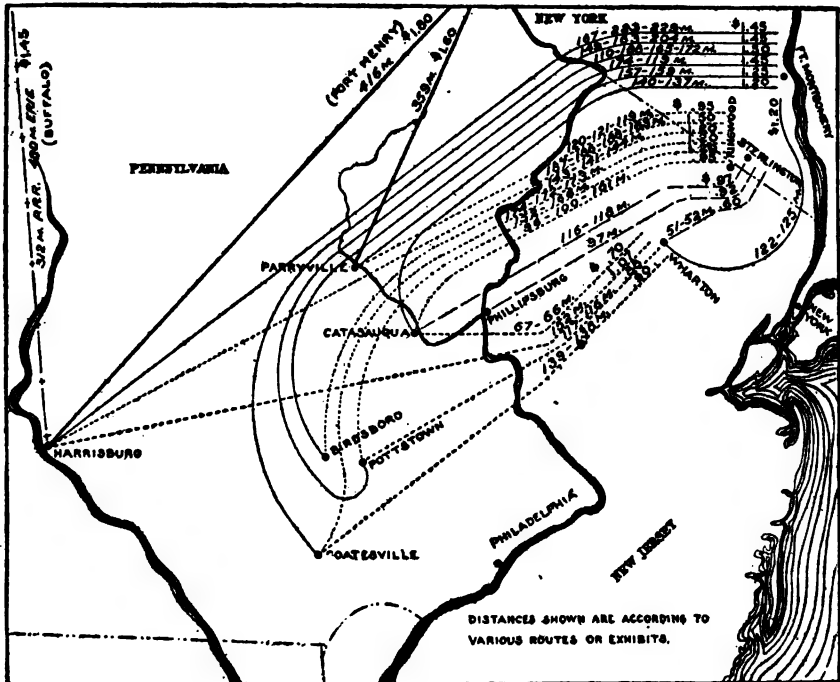
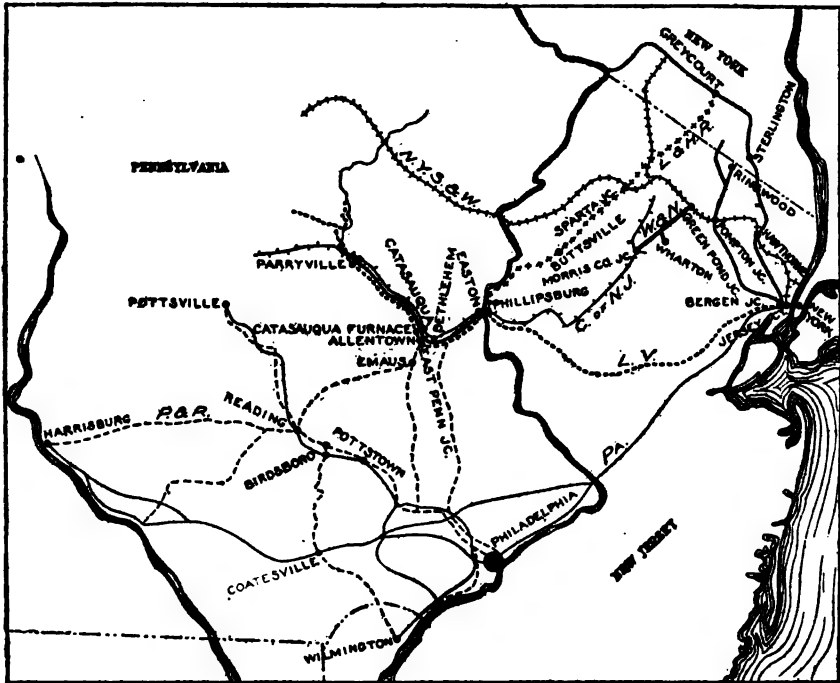
¹ Distances are variously given in the exhibits.

A glance at the maps and the tables in this report and the exhibits of both sides in the record will suggest the complex character of the rates and the relationships of the traffic to which they apply. There are factors connected with the reductions and advances suggested above which possibly are not fully disclosed in the record and which can be handled much more satisfactorily in conference by the interested parties. We shall make no order at this time, but await the results of conference between petitioners and respondent carriers. If no satisfactory schedule of rates can be agreed upon within 60 days, we will make such order as may be proper.

The rate from Keene's, N. Y., a point on the New York Central line 101 miles north of Syracuse, to Wharton, N. J., involved in the complaint of the Wharton Steel Company, has not been hereinbefore discussed because it presents considerations different from those affecting the other rates referred to. The history of this rate is—\$1.50 prior to May 22, 1906; \$1.35 from May 22, 1906, to August 1, 1907; \$1.50 on and after August 1, 1907.

The ore movement covered by the reparation claim was over the New York Central line and the Delaware, Lackawanna & Western Railroad, and the carriers' earnings per ton-mile on the rate imposed, \$1.50, for the distance of 348 miles given by the complainant were 4.31 mills. Reparation is sought to the basis of a rate of \$1.45,

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which is stated in the memorandum of claim attached to the complaint as "admitted just and reasonable rate."

At Keene's is the Rossie mine, owned by a corporation, the capital stock of which belongs to the Wharton Steel Company. It is stated on behalf of the complainant that the rate of \$1.50—

is attacked not on the ground that it is unjustly discriminatory when compared with the Buffalo and Port Henry rates, but on the ground that it had been increased by the New York Central & Hudson River Railroad Company after Wharton Steel Company had been induced by the establishment of a rate of \$1.35 to invest in that locality on the faith of the agreement of the New York Central Railroad that the lower rate would be continued. Edward Kelly, general manager of the Wharton Steel Company, and also an officer of the Rossie Iron Ore Company, testified that on the representation of the New York Central that a \$1.35 rate would be maintained, a large amount of money was spent at the Rossie mine, but that the \$1.35 rate was thereafter taken away and a rate of \$1.50 established, which is prohibitive. The mine is now closed. Wharton Steel Company contends that, having been induced to invest in this property by the railroad, it is entitled to reparation on all shipments made under the higher rate.

The assistant freight traffic manager of the New York Central & Hudson River Railroad Company testified that his company agreed to establish a rate of \$1.35, but that it was distinctly understood by the general manager of the Wharton Steel Company that it was made experimentally for a period of one year and upon an agreement that not less than 75,000 tons of ore a year would move under it. It appears from the testimony that the general manager of the Wharton Steel Company denied knowledge of any understanding as to the experimental nature of the rate, but admitted as to the minimum tonnage of 75,000 a year that "there was a certain tonnage mentioned," but he had forgotten just what it was.

The defendant claims, and it is not disputed, that only 64,000 tons of ore were shipped during the 12 months following the establishment of the rate of \$1.35; it also contends that on this amount of traffic the rate of \$1.35 "was, as nearly as could be ascertained, unremunerative, on account of the large empty-car haul which was involved," and for these reasons the rate of \$1.50 was restored in 1907.

The complainant did not submit evidence to show that the \$1.50 rate, as applied to its shipments, was unreasonable or unjustly discriminatory, although it claims that a rate of \$1.45 should have been applied. No claim was made for the establishment of a rate of \$1.45 for the future, for its general manager in his testimony stated that the ore would not move on a rate of \$1.40, and was not sure that it would move on a rate of \$1.35. The complainant states that it was induced to invest in the mine at Keene's by virtue of the establishment of the rate of \$1.35, but it does not measure its damages by that rate. In brief, the complainant rests its claim upon the alleged

breach of promise, or of a representation made by the defendant that it would further maintain the \$1.35 rate.

The opinion of the United States Supreme Court in the case of *Southern Pacific Co. v. I. C. C.*, 219 U. S., 433, seems clearly to apply to complainant's contention. The third paragraph of the syllabus therein is as follows:

Where the shippers do not complain of a new and higher rate because it is intrinsically an unreasonable one, but because, although reasonable, the railroads are estopped to advance it on account of having maintained the lower rate for a considerable period, it is beyond the power of the Commission to direct restoration of the old rate * * *.

We are unable to find that the rate of \$1.50 from Keene's, N. Y., to Wharton, N. J., was unreasonable as applied to complainant's shipments, or to hold that the defendant damaged the complainant by reason of its action in canceling the rate of \$1.35 and restoring the rate of \$1.50.

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INVESTIGATION AND SUSPENSION DOCKET NOS. 83 AND 83-A.
IN THE MATTER OF THE INVESTIGATION AND SUS-
PENSION OF ADVANCES IN DEMURRAGE CHARGES
ON INTERSTATE TRAFFIC BY CARRIERS OPERAT-
ING IN THE STATE OF CALIFORNIA.

Submitted October 19, 1912. Decided December 2, 1912.

Proposed increased demurrage charges in the state of California applicable upon interstate shipments were suspended by the Commission. After full hearing; *Held*, That upon this record the carriers have abundantly sustained the burden of proof to show that the increased charges are reasonable; and *Held further*, That under the circumstances here shown it is not unjustly discriminatory against California or against shippers or receivers in California to maintain higher demurrage charges at points in that state than are contemporaneously maintained in other states served by respondents. Order of suspension vacated.

W. E. Lamb for California Fruit Growers' Exchange.

W. R. Wheeler and *Seth Mann* for Traffic Bureau of the San Francisco Chamber of Commerce.

F. M. Hill for Fresno Traffic Association.

G. J. Bradley for Merchants & Manufacturers Traffic Association of Sacramento.

F. P. Gregson for Associated Jobbers of Los Angeles.

W. F. Herrin, *H. A. Scandrett*, and *H. C. Booth* for Southern Pacific Company.

E. W. Camp for Atchison, Topeka & Santa Fe Railway Company.

A. S. Halstead for San Pedro, Los Angeles & Salt Lake Railroad Company.

W. Olney, jr., *A. R. Baldwin*, and *A. P. Matthew* for Western Pacific Railway Company.

E. E. Mote for Pacific Car Demurrage Bureau.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The general and almost universal rule is that carload freight shall be loaded by the shipper and unloaded by the consignee. The rate contemplates a certain free time, usually 48 hours from the time the car is placed for loading, within which to load it, and the same free time for unloading after the car has been placed for unloading. If

the car is not loaded or unloaded within the so-called free time demurrage is charged, usually at the rate of \$1 per day on interstate traffic.

The principle of demurrage doubtless had its origin in connection with transportation by water. The one who chartered a vessel and who failed to provide cargo within a certain time was obliged to pay demurrage for the delay to the vessel. In applying this principle on railroads the demurrage charge has been held by this Commission and by the courts to be in part compensation to the carrier and in part a penalty to secure the release of equipment and tracks.

In *New York Hay Exchange Assn. v. P. R. R. Co.*, 14 I. C. C., 178, and in *Wilson Produce Co. v. P. R. R. Co.*, 14 I. C. C., 170, we approved track-storage charges assessed by the carriers as a penalty in addition to the demurrage because of the disposition of shippers to hold their cars under demurrage on the tracks of the carriers, thus precluding the possibility of using those tracks for other cars.

In *Kehoe v. C. & W. C. Ry. Co.*, 11 I. C. C., 166, we said that it is the duty of the railroad to transport freight to its destination and there deliver it to the consignee; that it is the duty of the consignee to receive such freight within a reasonable time, and that if he neglects to do so the liability of the railroad as a common carrier ceases and it becomes a warehouseman; that the railroad is under no legal liability to continue to discharge the duty of warehouseman, but may insist that the freight shall be removed by the consignee. We found that the congestion of terminals is often if not generally a more serious matter than the detention of the cars; that it would be not only much more expensive but often impossible for the railways to handle other traffic unless they required prompt release of cars, and that to permit one person to use the cars for storage purposes and deny that privilege to another creates a serious discrimination between shippers. We said that the demurrage is not to be based upon a fair rental value of the car, but is rather in the nature of a penalty, and that such charge should not be sufficient in amount to work undue hardship upon the one who occasionally has to pay it, but should be sufficient to accomplish the purpose for which it is intended.

The railroad is able to serve the public only when its cars are used for moving freight, and can satisfactorily and properly serve the public only when its tracks are available for reasonably prompt delivery of freight. The shipper or consignee who at a time of demand for transportation which taxes the facilities of the carriers delays cars and occupies tracks beyond the free time contemplated in the freight rate inflicts loss not only upon the carrier but upon other shippers or receivers who desire to use the carrier's facilities. In the

report of the committee on car demurrage to the National Association of Railway Commissioners at its convention in 1909 it is said:

If the farmer can not get box cars in which to send his grain or cotton to market, the responsibility often rests with the consignee at the seaboard or in some manufacturing district. If the coal mine can not get cars to fill its orders, it is more than probable that thousands of cars loaded with coal are held in various distributing centers awaiting favorable markets. These illustrations are not hypothetical; they are drawn from everyday experience and clearly demonstrate the harm that may be done the public through the undue detention of cars.

Many commodities are forwarded steadily from points of production when final destination is not known and are distributed to various destinations under reconsigning privileges. In some instances these privileges have been carried to such an extent as to form a real abuse. Our attention was recently called to one instance in which a car of coal was reconsigned 15 times. Within reasonable limits these privileges are, we think, necessary and proper, because they afford a more even flow of certain important commodities from points of production and a more prompt delivery at final destination, as well as more equitable distribution in time of need.

Prior to June 19, 1909, the demurrage rate in California was \$1 per car per day on both state and interstate traffic. On the date mentioned a state statute containing a reciprocal feature fixed the demurrage rate on state shipments at \$6 per car per day. This rate was continued in force until May 1, 1911, at which time it was superseded by a rate of \$3 per car per day under an order of the California Railroad Commission. On January 29, 1912, supplement 5 to Pacific Car Demurrage Bureau's tariff, Mote's I. C. C. No. 11, was issued providing an increase in the demurrage charge on interstate shipments to \$3 per car per day. By order of February 28, 1912, that schedule was suspended to July 6, 1912. The item which provided for the increased charge was reissued in succeeding supplements, which necessitated additional suspensions, and in that way the suspension has been extended to May 2, 1913. It is therefore seen that from January 19, 1909, until May 1, 1911, the demurrage charge on state traffic in California was \$6 and on interstate shipments \$1 per car per day, and that from May 1, 1911, to the present time the charge on state shipments has been and is \$3 and that upon interstate shipments \$1 per car per day.

In undertaking the burden of showing that the proposed increased charge is reasonable, respondents presented numerous shippers and receivers who testified that experience has shown that there is a direct relation between a high demurrage rate and a sufficient car supply; that since the higher charges on state shipments have been in effect there has been a marked improvement in the ability of the carriers to

furnish cars and conduct transportation; and that the higher charge has not been a burden upon the shipping public, but on the contrary has been a decided advantage. Some of these witnesses testified that they would prefer to see the demurrage rates increased on both state and interstate traffic rather than to see either reduced. They testified that the \$1 charge is insufficient to secure the release of cars; that the \$3 charge would not be a burden inasmuch as cars can be released promptly by the exercise of proper diligence on the part of shippers and consignees; that it is no more difficult to promptly unload interstate shipments than state shipments; and that the shipper who is properly equipped need not incur demurrage charges.

Numerous instances are referred to where consignees have held cars unreasonably because it was cheaper to pay \$1 per car per day demurrage than to promptly unload or rehandle the freight, and such practices are said to render it impossible for the carriers to meet the requirements of shippers.

It is suggested that if a carrier needs its cars it has the right to upload them, but it is stated that this is impracticable, and it is obvious that the carrier could not foresee or foretell the intentions and wishes of the consignees, and therefore could not, in a practical or economical way, arrange forces or warehouses for such purposes. The idea of carload rates is that the consignee will unload, and that the freight shipped under such rates will not be required to pass through the carrier's freight houses.

Respondents assert that the conditions surrounding the handling of freight in California are substantially different from those obtaining in other sections because of the heavy movement of freight either eastbound or westbound at certain seasons. The traffic to and from California balances fairly well for the entire year, but the westbound movement predominates from the latter part of December until June, while, from June to December there is a heavy eastbound movement of fruits and other products. It is stated that the demurrage rules are so framed that the shipper or receiver who is provided with reasonable facilities can, by the exercise of ordinary diligence, escape the payment of demurrage altogether, unless it be under some unusual or abnormal conditions. It is therefore urged that no discrimination against California is involved in the higher demurrage charge in California than that in effect at other points, and that if there be any discrimination it is in favor of the California shippers because of the advantages which they secure in the more liberal and certain car supply. When the \$6 demurrage rate went into effect there was considerable feeling against it on part of the public, but as the effect of the higher charge appeared this feeling was substantially removed.

It appears that the great bulk of the California products moves long distances to eastern states and therefore a large car supply is necessary in order to handle it at all. This traffic moves very largely in refrigerator cars, which in the main are hauled west empty because of the necessity to get them back as soon as possible for reloading. Whenever possible these cars are loaded westbound with commodities which will not injure the cars for their intended uses, and frequently such cars received in California are unduly detained by consignees when the shippers of fruit and other perishable products are anxious to secure them for eastbound loading.

It is stated that the neighboring states of Arizona, New Mexico, Nevada, and Oregon do not produce commodities in such volume and at such times that they are offered for shipment during short or limited periods as is the case in California, and that because of these dissimilarities the conditions in those states are not fairly comparable with those in California and justify a different demurrage rule in California.

In addition to the witnesses who were examined, respondents tendered the testimony of numerous others whose testimony would be substantially the same as that of those examined and simply cumulative. They presented the results of a large number of interviews with consignors and consignees, 119 of whom stated that the cars containing state shipments were released more promptly than those containing interstate shipments because of the higher demurrage charge on the state shipments; 63 stated that they had increased their facilities for handling freight, and 55 report that their facilities have not been changed; 19 report that they had been subjected to increased expenses which are greater than the amount of demurrage previously paid under the \$1 rate, and 85 report that they have experienced no such increase in expense; 67 report that they have had less difficulty in securing cars for loading than under the previous \$1 rate on state shipments; 58 state that the service rendered by the carriers is better than formerly; 28 report that there is no difference in the service, and 2 assert that the service is worse.

The Pacific Car Demurrage Bureau has kept an exhaustive and careful record, and the manager of that bureau testifies that if the demurrage charge on interstate shipments had been the same as upon state shipments the carriers' available equipment would have been increased by approximately 3,000 cars per month.

Respondents assert positively that the increased demurrage charge is not intended to increase the carriers' revenues; on the contrary, they expect from it the same effect produced by the higher charge on state shipments, to wit, a substantial reduction in the amount of demurrage paid. They expect benefit to result to both carriers and shippers from the release of equipment.

Carefully prepared and uncontradicted statistics are presented, covering three periods. The first, 32 months from November 1, 1906, to June 30, 1909, when the demurrage charge was uniformly \$1 per car per day; the second, 22 months from June 30, 1909, to April 30, 1911, when the charge on state traffic was \$6 and on interstate traffic \$1 per car per day; and the third, 10 months from May 1, 1911, to February 29, 1912, when the charge on state traffic was \$3 and on interstate traffic \$1. The total time covered by the second and third periods is the same as that covered by the first period.

These records show that at the important terminals of San Francisco, Los Angeles, Oakland, and Sacramento, during the first period 781,214 cars were handled, while during the second and third periods 1,068,240 cars were handled, an increase of 287,026 cars, or 36.74 per cent. During the first period 101,303 cars were held beyond the free time, while during the second and third periods the number so held was 38,103, a decrease of about 62 per cent.

The percentage of cars held overtime at these four terminals during the first period was 13.04. The detention during the first period of cars subject to the \$6 charge was 1.5 per cent; the detention of cars subject to the \$3 charge during the third period was 2.43 per cent, and the average detention of cars subject to the state charge during the second and third periods together was 1.84 per cent. During the second period the detention to interstate shipments was 8.68 per cent; during the third period it was 8.11 per cent, and the average for the second and third periods together was 8.49 per cent.

The demurrage collected at these four terminals during the first period, when the charge was uniformly \$1, amounted to \$282,917, while during the second and third periods together, when the charges on state shipments were \$6 and \$3, it was \$150,399, a decrease of \$132,578, or 47 per cent.

At all stations in California 2,392,509 cars were handled during the first period, and 3,506,701 during the second and third periods, an increase of 1,114,192 cars, or 46.57 per cent. During the first period 187,172 cars were held overtime, and during the second and third periods 113,343 cars were so held. During the first period the detention was 7.82 per cent; during the second period the detention of cars subject to the \$6 charge was 1.06 per cent; during the third period the detention of cars subject to the \$3 charge was 1.48 per cent; and during the second and third periods together the average detention to state shipments amounted to 1.21 per cent. During the second period the detention of interstate shipments was 5.68 per cent; during the third period it was 5.32 per cent; and for the second and third periods together, 5.56 per cent.

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The collections of demurrage for the whole state amounted during the first period to \$566,298, and during the second and third periods to \$344,146, a decrease of \$222,152, or something over 39 per cent.

During the first period the detention beyond free time averaged 3.32 days per car, or 611,345 car days; during the second and third periods together the average detention of all cars was 2.4 days, or 170,164 car days, a decrease of practically one day per car, or 441,181 car days.

The demurrage charges paid during the second and third periods together were approximately \$7,000 per month less than during the first period.

A statement is presented showing the demurrage incurred and paid by some 340 consignees and shippers for the three periods mentioned, recapitulation of which shows that during the first period they held 47,482 cars 140,655 car days, upon which they paid demurrage aggregating \$140,655. During the second period they held 1,963 cars subject to the \$6 charge for 2,535 car days, upon which they paid demurrage amounting to \$15,412. During the third period they held 1,348 cars subject to the \$3 charge for 2,024 car days, upon which they paid demurrage amounting to \$6,049. During the second and third periods they held 6,343 cars subject to the \$1 charge for 18,135 days, upon which their demurrage charges were \$18,135. They therefore paid \$140,655 demurrage during the first period, and \$39,596 during the second and third periods.

Many of these consignees and shippers have entirely eliminated demurrage charges. Practically all of them have reduced such charges to insignificant amounts. One firm which paid \$2,516 of demurrage during the first period paid \$302 for the second and third periods together. One firm that paid \$1,799 during the first period paid \$132 during the second period on cars subject to the \$6 charge, and during the third period paid nothing. It is abundantly shown that the effect of the higher demurrage charges on state shipments has been to very materially reduce the amounts of demurrage collected by the carriers.

Statement is presented which shows that 25.52 per cent of the number of cars loaded with perishable freight were held overtime at Omaha, Nebr., Denver, Colo., and Chicago, Ill., the average time in excess of the free time being 8.32 days. During the same time 10.75 per cent of the cars loaded with dead freight were held overtime at the same points, the average delay in excess of the free time being 5.85 days.

It is suggested by protestants that it is unduly discriminatory for respondents to assess \$3 per car per day demurrage in California and a lower charge at points on their lines other than in California. As previously stated, respondents insist that there is no discrimination

against the California people, but on the contrary if there is discrimination it is in their favor. In addition to the differences in conditions already mentioned, respondents say that the situation in California differs from that in other states in that in California the state rate is fixed by the state. The reciprocal feature of the state rule imposes penalties upon the carriers for failure to supply cars upon demand of shippers, and it is therefore essential that they have a full and dependable car supply, which they can not have under the lower demurrage charge on interstate shipments. It is testified that approximately 20 per cent of the cars handled in California are loaded with interstate traffic and 80 per cent with state traffic, and it is said that but 5 per cent of the total demurrage is paid by consignors for failure to load cars within the free time. Confusion and difficulty is experienced in assessing demurrage charges because it is frequently difficult to determine the character of a shipment; for instance, shipments coming into the state through its ports, some of which originate in California and others at interstate points, and shipments upon which reconsignment or diversion privileges are exercised, which are originally billed locally but are afterwards sent to interstate points. They say that they have not experienced difficulties of congestion in adjacent states as they have in California, and that they deemed it wise to withhold change in Arizona and New Mexico because they are newly created states with newly constituted commissions. On the argument it was stated that neighboring states are considering increasing their state demurrage charges because of the manifest benefits which have come from the higher charges in California.

Respondents point to the several decisions before referred to and aver that the demurrage charge of \$1 per car per day is not properly compensatory for the use of the car. They point to statistics which show that the average daily earnings of a car on the lines of the carriers in the group which includes California amount to \$3.73. They urge that necessarily a certain percentage of their cars are out of repair and engaged in the carriers' service; that Sundays and holidays are excluded in assessing demurrage charges, and that therefore the reasonable earnings per car per day are substantially in excess of the proposed \$3 charge. They point to the previously cited cases in which this Commission has approved track-storage charges in addition to demurrage, and to numerous instances in which charges greater than \$1 per day have been approved by state commissions or the courts. *Miller v. Mansfield*, 112 Mass., 260; *Rothschild v. C. & N. W. Ry. Co.*, Iowa R. R. Comm. Rep. for 1887, 783; *N. & W. Ry. Co. v. Adams*, 90 Va., 393, and cases therein cited.

It is insisted that the \$1 demurrage rate was fixed years ago, when cars were of a much smaller capacity and lower earning power than

at the present time; that providing the larger equipment has necessitated a correspondingly increased cost and that therefore the earning power of a car of to-day is substantially in excess of that of the smaller type which has been superseded. The increased capacity of cars has in similar connections been urged as a reason for granting additional free time for unloading, but it seems evident that a given quantity of freight can be unloaded from one car as quickly and as cheaply as it could be unloaded from two cars, and if a large car is held overtime the demurrage is on only one car, whereas if two cars containing an equal amount of freight were held overtime demurrage would accrue upon both cars.

The testimony submitted by protestants was meager and confined to that of three witnesses, one of whom asserted that the increase in the demurrage rate was resorted to by the carriers as a means of increasing their revenues. This witness testified that during one year his firm paid \$1,800 demurrage, after which experience it decided it would be cheaper to increase its facilities for caring for its freight, and admitted that the higher state demurrage charges had been effective in stimulating the prompt release of cars. During the first period, under a uniform rate of \$1 per car per day, this firm detained 70 cars and incurred demurrage charges of \$459; during the second and third periods it detained 9 cars and incurred demurrage amounting to \$38.

The second witness testified that when his firm was engaged in taking an inventory it would not unload cars, whatever the demurrage charges might be. The record shows that during the first period of 32 months this firm detained 282 cars and incurred demurrage charges of \$698, while during the second and third periods it detained 70 cars and incurred \$147 demurrage. This witness said that the amounts of demurrage paid by his firm "have not been worrying us."

The third witness admitted that the facilities of his firm were insufficient to care for its business and are in a cramped condition. He referred to bunching of cars by carriers as a cause of demurrage accruing, but admitted that the carriers' rules provide for abatement of demurrage so caused and that his firm had secured waiver of charges under that provision. This firm, during the first period, detained 330 cars and incurred \$1,189 demurrage; during the second and third periods it detained 225 cars, upon which \$980 demurrage accrued. It appears, however, that during the second and third periods there was a substantial increase in the business of the firm.

Much has been said in proceedings before us and in the press and magazines about the importance of increased facilities for carriers, and it has been strongly urged that those facilities should be provided out of additional revenue secured from generally increased freight rates. Some have gone so far as to insist that proper increased

efficiency can be secured in no other way. A full argument of those questions would necessitate an analysis of the earning capacities of the carriers under the present rates and that will not be undertaken here. It is sufficient to say that one way in which to increase the facilities as well as the earning power of the carriers is to bring about the fullest and freest possible use of the facilities and equipment already possessed and to attempt as far as possible to secure needed relief, not by general increase in freight rates, but by reasonable charges for services rendered levied against those for whom such services are performed.

Stepping for a moment outside of the record we see, in a report of an investigation made of conditions on a large and important railroad system of the country, that in the busy season the average time consumed by shippers in loading cars is less than 2 days, and the average time consumed by consignees in unloading is less than 3 days, Sundays included. This indicates the clear possibility of loading and unloading within the free time allowed whenever and wherever proper facilities are provided and due diligence is exercised.

In their brief protestants argue that the circumstances and conditions in California are not substantially different from those which obtain in other sections of the country where of necessity the movement of the products of the section is heavy during certain portions of the year. Their principal contention, however, is that the imposition of a higher demurrage charge in California than in other states served by respondents, or than in other states of the Union, is in violation of sections 1 and 3 of the act, and an undue discrimination against California and the shippers and receivers located therein. Section 1 of the act requires that all charges for any service shall be just and reasonable. The record in this case we think conclusively shows that under the circumstances a demurrage charge of \$3 per car per day on interstate shipments in California is not unreasonable *per se*. Section 3 of the act prohibits undue or unreasonable preference or advantage to any person, locality, or particular kind of traffic. Section 2 of the act prohibits charging to one a greater or less compensation than is charged to another for a like and contemporaneous service under substantially similar circumstances and conditions. If it can be said that section 3 prohibits a higher demurrage charge in California than is assessed in New York, would it not necessarily follow that it also prohibits charging a higher rate for transporting a given quantity of freight a given distance in California than is charged for a like service in New York? Clearly the circumstances and conditions connected with the service rendered must be taken into consideration in determining what is undue or unreasonable preference or advantage under section 3 of the act.

The carriers are under no obligation to furnish storage in cars, but if they voluntarily undertake to provide such storage they are entitled to reasonable compensation therefor, which, as the Supreme Court has said, may include a profit beyond the cost of the service. There can be no justice in permitting one consignee to hold cars for storage or for his convenience or economy when the business of shippers is suffering because they can not get those cars for loading, and the carriers are deprived of the earnings upon such loading. If additional charges for the purpose of releasing tracks are proper and reasonable, why are they not equally proper and reasonable when for the purpose of releasing cars?

On this record there can be no doubt that respondents have shown that the conditions in California are substantially different from those obtaining in other states which they serve. The benefits derived by the shipping public in California as well as by respondents from the higher demurrage charges on state traffic are conclusive and unchallenged. Under the circumstances here presented it does not appear that the higher demurrage charge in California than at other points on respondents' lines is unjustly discriminatory against the California shipper or receiver, or unduly preferential to shippers and receivers at other points on respondents' lines. It does not at all follow that in withholding disapproval of the proposed increased demurrage charge in California the same action would follow elsewhere where conditions are different, but on the record as here made it is impossible to find otherwise than that respondents have amply met the burden cast upon them by the statute of showing the reasonableness of the proposed increased charge, and the order of suspension will be vacated as of January 6, 1913.

LANE, Commissioner (concurring):

I agree to this conclusion and approve of this unprecedented demurrage charge as to California for this reason: That it is practically unopposed by the shippers and is supported by those railroad officials who have shown themselves most sincerely in favor of securing efficient car service. It is not the demurrage charge that has resulted in the phenomenally excellent condition that obtains in California. Such condition is due in my judgment largely to the presence of an effective, powerful, and authoritative demurrage bureau which has competent management and with which the railroad operating officials work in harmony to give a service which the law requires. Under such conditions it makes little difference what the demurrage rate may be, for little demurrage will be imposed under normal conditions, and abnormal conditions are prevented from developing. Where there are no independent demurrage bureaus, as in most of

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the eastern territory, and rules are but laxly enforced, or where there is no authority in the demurrage officers to require the carriers to make prompt delivery and otherwise efficiently serve shippers and consignees, or where there is an inadequate supply of equipment and the rule rather than the exception is irregularity of movement—where such things are found a demurrage rate such as we here justify would be nothing less than an unjustifiable penalty imposed upon shippers and consignees because of the railroad's delinquencies. The opinion in this case is to be read as a promise to those roads who believe in doing their duty that this Commission will cooperate with them, and is not to be understood as the indorsement of any particular rate of demurrage or as the establishment of any permanent principle.

PROUTY, *Chairman* (dissenting):

This record plainly shows that the \$1 demurrage charge had not proved adequate in the state of California. Notwithstanding that this charge was apparently imposed and collected, cars were held under load and awaiting load as though there were no demurrage rules, and this abuse had seriously crippled the ability of railroads to afford reasonable transportation facilities. Plainly some measures should have been taken to correct this situation. As appears from the opinion, the state of California imposed, first, a \$6, and afterwards a \$3, per day demurrage charge, and this seems to have stopped the evil of car detention with respect to state movements.

The record indicates, however, that there is still undue detention with cars employed in interstate traffic, and I do not in any degree dissent from the proposition that something should be done to correct this evil. Some way, certainly, should be devised by which the shipper is prevented from withdrawing cars from the service of transportation, since otherwise the entire public must suffer. But I doubt the wisdom of reaching this evil by the application of a general \$3 demurrage charge.

In my opinion, taking this country as a whole, the present demurrage rate of \$1 per day is sufficient, when honestly enforced. There are undoubtedly instances in which this is not true. There are localities at which, and certain lines of business in which, the \$1 charge is not sufficient to correct the undue detention of cars. But these are special cases, which can be dealt with by special remedies and have been so dealt with, with the approval of this Commission. To impose a general charge higher than \$1 would be, in my opinion, to impose upon the honest shipper an undue burden.

Car efficiency in this country is not what it should be, but this, in my opinion, is due more to the railroads than to shippers, and measures to improve car efficiency should ordinarily take some other form

than a mere increase of the demurrage rate. I should prefer to see this situation in California dealt with by some other means than a general increase in the demurrage charge. While it is possible that the Pacific coast states may be so isolated from the rest of the country that a different rule can be applied there from what is maintained elsewhere, even that will, I think, be found difficult. To my mind it is most unfortunate to break into the uniform demurrage code even upon the extreme edge.

No. 1778.

H. GUND & COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Decided December 2, 1912.

At the original hearing complainant asked reparation upon all grain passing through its country elevators at interior points in the state of Nebraska, which grain was shipped through Missouri River points to eastern destinations, upon the ground that an elevation allowance was made by defendant to complainant's competitor for elevation-in-transit at Nebraska City; but action by the Commission was deferred pending decisions of the United States Supreme Court in the *Elevation cases*. Since then such decisions have been rendered; but, following them, the Commission can not hold that the discrimination complained of was undue or unreasonable, because under said decisions a railroad may for competitive reasons grant an elevator allowance although no transportation service is rendered by the shipper owning the elevator.

J. D. Ware for complainant.

R. B. Scott for defendant.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner*:

A report in this case has already been rendered, 18 I. C. C., 364, the closing paragraph of which read:

What is above said with regard to the view that the purpose and effect of these allowances is to cause through rates to be greater in amount than the

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sum of the locals was not discussed at the hearing or argument in this proceeding. It would be improper, therefore, to base any award of reparation thereon. No dismissal of this complaint will be made, inasmuch as this would cause the statute of limitations to run against complainant's claim. It will be held for further action when the decision of the Supreme Court upon the matters here involved shall have indicated the power of the Commission in the premises.

The facts are set forth in the previous report and need be but barely outlined here. Gund & Company are grain buyers who own and operate elevators at interior points in Nebraska on the line of the Chicago, Burlington & Quincy Railroad. The Duff Grain Company is a competitor in the purchase of grain and owns an elevator in Nebraska City, Nebr., a point where the railroad of the defendant crosses the Missouri River. At this point for several years the defendant made an elevator allowance to the Duff Grain Company of three-fourths of a cent per 100 pounds upon grain passed through the Duff elevator. Gund comes now and says that it was illegal to do this inasmuch as it effected a discrimination in the rate in favor of the Duff Grain Company and against Gund & Company, and asks that reparation be awarded to it in the amount of three-fourths of a cent per 100 pounds upon the grain which Gund & Company shipped through Nebraska City and which did not receive an elevator allowance.

In view of the recent decisions of the United States Supreme Court in the *Peavey case*, 222 U. S., 42, and *Updike case*, 222 U. S., 215, the Commission called upon the parties hereto to file briefs setting forth their views as to what order should now be entered in this proceeding. The complainant takes the view that the Supreme Court has held that where an elevator renders service to a carrier connected with transportation or furnishes any of the instrumentalities used in transportation the railroads may pay for such service or facility what it is reasonably worth, and that the Commission may determine whether the elevation was a service to the carrier in connection with the transportation, saying:

The basis, then, on which the carrier may pay elevation charges is "services received" or "instrumentalities used" in connection with transportation. *Ergo*, if the elevation is not a service to the carrier, but only an advantage to the owner of the grain, the carrier may not pay for it. If the instrumentality used is used by the owner of the grain for his *own* purposes and not for the purpose of facilitating transportation, the carrier may not pay for it. If, in either case, the carrier pays he thereby gives an undue advantage to the person receiving the payment over that person's competitor who does not receive such a payment.

Now, apply this reasoning to the * * * case before the Commission. The Duff Grain Company bought at various stations west of Nebraska City, in competition with the complainant; shipped this grain to Nebraska City, a way station on the line of the Burlington. * * * After the grain had been elevated

and treated as the owner desired, the railroad company was required to switch another car to receive the grain. * * * All this having been done, the car was again started upon its journey. In all this extra work done by the railroad company in the elevation of the grain and the reloading of it by the elevator company, it is impossible to discover a single particle of service to the carrier, or the use of a single instrumentality that was of any benefit whatever to the carrier. Everything done was for the sole use and benefit of the Duff Grain Company, and for the railroad to pay for it was certainly to unduly discriminate in favor of the grain company and against the complainant.

* * * * *

All that the *Peavey* and *Updike* cases decide * * * is that where services are rendered to the carrier in connection with transportation, the mere fact that benefits incidental thereto result to the owner does not make it improper for the carrier to pay for the services. But where there are no services rendered to the carrier the payment would be illegal. In other words, the Commission and the court differ only in this: The Commission forbade elevation allowances in all cases; the court says they are legal where services are rendered by the elevator to the carrier, or where instrumentalities belonging to the owner of the grain are used by the carrier. The court does not say that elevation allowances are proper in all cases. On the contrary, the clear meaning of the decisions are that they are not proper in all cases, and are proper in no case except where it can be shown that the "service" was rendered to the carrier.

* * * * *

In the case at bar it must be clear that there were no services rendered to the carrier, and, hence, that the allowance was improper. To the extent that it was improper, it was in effect a rebate, a discrimination in favor of the Duff Grain Company against the complainant.

To this position the defendant urges that under the Supreme Court decision the admission by the complainant that the acts performed by it do not constitute a transportation service disposes of its right to any allowance for elevation. As to the contention that the allowance made by the railroad to the Duff Grain Company at Nebraska City was illegal and a rebate, defendant says:

Argument would seem to be unnecessary upon the proposition that a rebate having been paid to one shipper, the Commission will order the carrier to pay a rebate to any other shippers.

It should be borne in mind that complainant's position is that the payments to the Duff Grain Company were illegal and were not for transportation services and were rebates. If this be conceded for the sake of argument, we do not understand that the Commission will direct us to violate the law further by paying rebates to complainant. The reason for the payments to the Duff Grain Company and defendant's justification thereof are fully set forth in our former brief.

Defendant's justification as given in its former brief may be summarized in this wise: The right to make elevation allowances to terminal elevators of transfer houses rests upon the claim heretofore urged with success before the Commission that these houses furnish appliances used in, and perform services connected with, the trans-

portation of grain. The Burlington road originally took a position opposed to elevator allowances at the Missouri River.

After having contested the issue unsuccessfully before the tribunal having exclusive jurisdiction over the subject matter of elevation allowances and full power to determine the validity and fix the rates of allowances for the services so rendered in the transportation of grain, the Burlington was forced to yield to the authority of this Commission. Upon the taking effect of the order made on rehearing reducing the allowance to three-fourths of 1 cent the Burlington issued, filed, and published the elevation tariff in conformity thereto, which took effect July 19, 1907. It had then been operating one year and two days in defiance of the competition of the Union Pacific without an elevation tariff and without making payment of any elevation allowance, at a disadvantage and at a necessary loss both of patronage and prestige. The involuntary elevation tariff thus lawfully established by the act of Congress, through the agency of this Commission, to which was delegated the administrative duty of determining what rate met the legislative standard of a charge and allowance that "shall be no more than is just and reasonable" is the sole foundation of the complaint under investigation.

Thus we see the position of the defendant to be that against its own wish, but to meet competitive conditions growing out of the fact that the Union Pacific Railroad Company at Omaha was making an allowance, which at first the Commission recognized, the Burlington gave a similar allowance at Nebraska City.

The contention of the defendant is that—

The ruling in the *Washer Grain Company's case*, 15 I. C. C., 147, compelled the Missouri Pacific to put all terminal houses situate at different points on the Missouri River upon an equality. Restitution was awarded to a terminal house at Atchison for elevation allowances equal to those paid at Kansas City and Coffeyville. The ruling justifies the payment of elevation at Nebraska City by the Burlington, while making like payments at Omaha. Indeed it would have been an unlawful discrimination against the Duff Grain Company to have refused it payment of elevation allowances at Nebraska City so long as the Burlington had an elevation tariff in effect at Omaha.

The Supreme Court was appealed to, and it recognized the right of a carrier to pay a shipper for a service that it rendered incident to the transportation; that is to say, if the Union Pacific wished to secure the release of its car by having the grain put into an elevator at Omaha, it could make a reasonable allowance therefor.

Our conclusion is that by reason of the allowance made to the Duff Grain Company at Nebraska City which was not extended to the complainant at its interior elevators there was effected a discrimination which was harmful to the complainant. We, however, can not hold that this discrimination was undue or unreasonable under the third section of the act, because, as we understand the decision of the Supreme Court in the *Peavey case, supra*, a railroad may for competitive reasons grant an elevator allowance although

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no transportation service is rendered by the shipper owning the elevator. We quote from the opinion in that case at page 48:

The Union Pacific made the allowances in question to elevators at its termini; it had no motive to make them anywhere else. The competitors of the Union Pacific concerned in the *Diffenbaugh* case were compelled by competition to make the same allowance at Missouri River points, but they also make it nowhere else. The Traffic Bureau. Merchants' Exchange of St. Louis, complained to the Commission that the result was a discrimination against St. Louis of three-fourths of a cent per 100 pounds. But the principle of the decision is that the allowance to elevators upon their own grain is to be stopped everywhere unless they are prevented from using the opportunity for treating their grain. Therefore this question of preference between cities does not need to be discussed. *But, as remarked below, the Union Pacific could not be complained of on this ground, 176 Fed. Rep., 424, and it would be impossible to deny the same right to competing roads, merely because as the result of the conditions one city would gain and another lose. Louisville & Nashville R. R. Co. v. Behlmer, 175 U. S., 648.*

Applying this reasoning to the present case, it must follow that the Burlington road, having the right for competitive reasons to make an elevator allowance at Omaha although no transportation service was rendered by the elevator, also had the right to extend such an allowance for similar competitive reasons to Nebraska City, a competing point. An order of dismissal will be entered.

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INVESTIGATION AND SUSPENSION DOCKET NOS. 80 AND 80-A.
IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FURNITURE FROM NAPPANEE, IND., TO CHICAGO, ILL., AND OTHER DESTINATIONS.

Submitted October 26, 1912. Decided December 2, 1912.

Proposed advances in rates on furniture from Nappanee, Ind., to Chicago, Ill., not found unreasonable or unjustly discriminatory.

Harold E. Zook and Daniel Zook for Coppes, Zook & Mutschler, complainants.

Charles D. Clark and William C. Coleman for Baltimore & Ohio Railroad Company.

C. C. Wright and C. A. Vilas for Chicago & North Western Railway Company.

C. H. Van Alstine for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

This case concerns the reasonableness of proposed advances in rates on furniture in carloads and less than carloads from Nappanee, Ind., to Chicago, Ill., and Chicago rate points, and also to points in Minnesota and Wisconsin on shipments via Chicago and Chicago junction points. Upon complaint of certain furniture manufacturers at Nappanee, the Commission suspended supplement No. 1 to Baltimore & Ohio Railroad Company tariff, I. C. C. No. 10176, proposed to become effective March 1, 1912, and supplement No. 5 to Eugene Morris, agent, freight tariff I. C. C. No. 306, proposed to become effective April 30, 1912. Supplement No. 1 is involved in Investigation and Suspension case No. 80, and supplement No. 5 in Investigation and Suspension case No. 80-A. The purpose of these schedules is to eliminate the existing commodity rates and establish class rates which are higher. The proposed advances are confined to the local rates up to Chicago and Chicago Junction points, but they affect the rates from Nappanee to points west of Chicago because the latter are made up of the combination of local rates to and from Chicago and Chicago junction points.

The increases sought by the respondents range from 2½ to 9½ cents per 100 pounds on carloads, and from 8 to 12 cents on less than carloads. On carload shipments the minima were also changed, being lowered in some instances and raised in others, according to the classification. On less-than-carload shipments actual weight was still to govern. All of the rates involved apply only over the line of the Baltimore & Ohio Railroad from Nappanee to Chicago.

It is stated on behalf of that respondent that the suspended schedules would restore the class rates from Nappanee in conformity with the mileage-scale basis existing generally throughout central freight association territory, and that the commodity rates, which originally became effective in October, 1905, were established to meet the competition in rates existing at Niles and Buchanan, Mich., and not because they were considered reasonable *per se*. It alleges that such competition has disappeared, and therefore no occasion exists for longer maintaining an unduly low scale of commodity rates. This respondent asserts in its brief that in 1895 some of the all-rail lines from Benton Harbor and St. Joseph, Mich., decided to meet the water competition across Lake Michigan which had existed for many years between these points and Chicago. Accordingly, the Pere Marquette Railroad Company issued commodity rates from Benton Harbor and St. Joseph to Chicago, as also did the Michigan Central Railroad Company. The same rates were established by the Pere Marquette between Buchanan and Chicago.

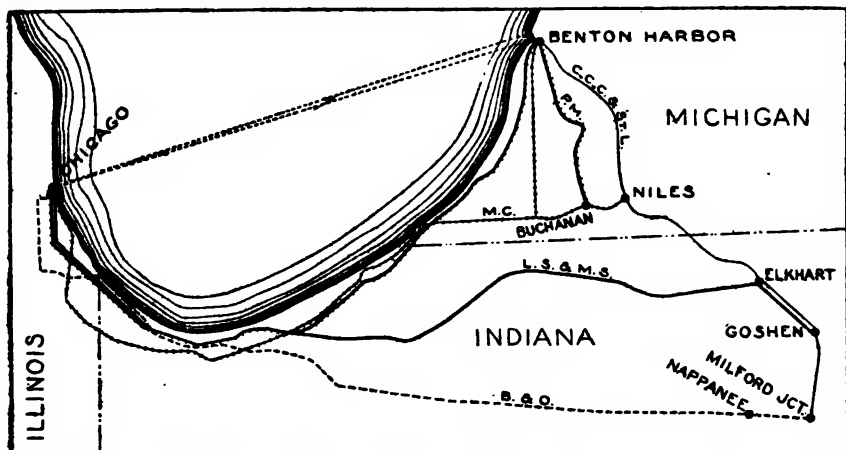
Later the Big Four published the rates from St. Joseph, Benton Harbor, and Niles, Mich., and Goshen, Ind., via Elkhart, Ind., and the Lake Shore & Michigan Southern Railway, also via Milford Junction, Ind., and the Baltimore & Ohio Railroad to Chicago. The Baltimore & Ohio, being a party to the tariff naming the rates via Milford Junction, shipments forwarded via this route would of necessity move through Nappanee, which is a local point on the Baltimore & Ohio line, 104.6 miles east of Chicago, but the rates from Nappanee were not changed.

By reason of this situation (the brief states) in 1905 certain manufacturers of furniture at Nappanee complained to this Commission that they were being discriminated against by reason of being charged higher rates for the same commodity from Nappanee to Chicago than were producers at Niles and Buchanan, with whom they were in competition. Accordingly, after the matter was taken up with this Commission, in the fall of 1905 the rates from Nappanee were put on a parity with the rates from Niles and Buchanan; but, as was expressly stated to the Commission at that time, the rates were not lowered because the former rates from Nappanee were considered unreasonable *per se*, but simply to meet the competition existing at Niles and Buchanan. These rates continued in effect until October, 1911, when their reasonableness being questioned when compared with the rates on furniture from other points in central freight association territory east of this particular territory, the carriers serving Niles, Goshen, and Buchanan withdrew their special commodity rates and restored the

official classification basis except as modified by the exception sheet to that classification.

For the Baltimore & Ohio Railroad not to have followed suit and to have refused to restore the rates from Nappanee to the same basis, would have amounted to an unjustifiable discrimination in favor of producers at Nappanee against producers at other points similarly situated. In fact, producers at Niles and Goshen had already insisted that Nappanee be not so favored. No objection was raised to the readjustment provided it was uniform. Accordingly, the tariffs were issued which are now under suspension. Not only have there been no complaints against this uniform readjustment, but so far as the Baltimore & Ohio Railroad is advised, the present complainants, a single firm, are the only persons that have raised any objections whatsoever.

According to the complainants' brief, their shipments are made up of mixed cars, viz, tables, library tables, chamber suites, sideboards, chiffoniers, and kitchen cabinets, all of which are covered by the present commodity rate of 10 cents, minimum 16,000 pounds, on furniture, new, all kinds. The proposed class rates on furniture,



new, n. o. s., carloads, all kinds, are as follows: 19½ cents, minimum 12,000 pounds, or 15½ cents, minimum 20,000 pounds. These rates are shown as exceptions to the official classification rating of second-class, minimum 10,000 pounds on new furniture. The second-class rate from Nappanee to Chicago is 22 cents. The rate on new furniture, all kinds, is stated by the complainants to be their "practicable carload shipping rate."

This commodity rate of 10 cents was first established to Chicago from Benton Harbor by the Pere Marquette Railroad on May 8, 1895. This point, as will be seen from the map herewith, is located on Lake Michigan—diagonally across from Chicago and is reached by water lines. On January 23, 1900, the Michigan Central Railroad extended the rate to Niles and Buchanan, both of which are points away from the lake, and on July 25, 1903, the Pere Marquette made it effective over its line from Buchanan.

In 1905, the complainants appealed to the Commission, by informal complaint, seeking the extension of the rate to Nappanee. Following correspondence with the respondent, the Baltimore & Ohio Railroad, the Commission was advised by that carriers' general traffic manager, that the class rates then in effect from Nappanee were in accordance with the usual basis of rates on such traffic, and in his opinion were justified by the service. He further stated that:

It seems, however, that some of the roads in the central freight association territory reduced their rates from points in Michigan to meet water competition, and this was followed by a reduction from several interior Michigan points. These reductions were made without our knowledge, and after giving the matter due consideration, we have decided to make the same rate, not that our present rate is too high, but because we believe it will be policy for us to place Messrs. Coppes, Zook & Mutschler and other manufacturers similarly situated, on the same basis with their competitors, and I have to-day instructed that a rate of 10 cents per 100 pounds on furniture, carloads, minimum weight 16,000 pounds, be made from Nappanee to Chicago.

On October 9, 1905, the 10-cent rate was established from Nappanee, and on February 22, 1906, the Michigan Central also published it from Benton Harbor.

No change was made in this new rate until October 18, 1911, when the Pere Marquette canceled it from Benton Harbor and Buchanan. This was followed by the cancellation by the Michigan Central on November 4, 1911, of the rate from Niles, Benton Harbor and Buchanan. In line with this action, the Baltimore & Ohio filed its supplement involved herein, proposing to cancel the rate from Nappanee on March 1, 1912. In all instances the cancellation of the commodity rates left in force the class basis. We are unable to find from the tariffs on file with this Commission that the 10-cent commodity rate or any scale of commodity rates now applies on furniture from any point in central freight association territory other than Nappanee. There is no record of any complaints filed with the Commission concerning the class rates either prior or subsequent to the cancellations from the points before named.

Following is a statement of the distance to Chicago from such points:

From—	Miles.
Benton Harbor, Mich., via Pere Marquette.....	103.2
Buchanan, Mich., via Pere Marquette.....	129.2
Niles, Mich., via Michigan Central.....	93.0
Buchanan, Mich., via Michigan Central.....	86.0
Benton Harbor, Mich., via Michigan Central.....	101.0
Buchanan, Mich., via Michigan Central.....	86.0
Nappanee, Ind., via Baltimore and Ohio.....	104.6
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For the distance of 104.6 miles from Nappanee, the class rates, in cents per 100 pounds, under the mileage scale basis prevailing in central freight association territory, are as follows:

Class.....	1	2	3	4	5	6
Rate.....	24.5	22	19.5	12.5	9.5	8

These rates are on the 110-mile scale, which applies for the distance of 104.6 miles.

In the case of *Indianapolis Freight Bureau v. C. C. C. & St. L. Ry Co.*, 15 I. C. C., 504, the Commission passed upon the reasonableness of the class rates between Indianapolis and Cincinnati to Jeffersonville, Ind. Therein the Commission set forth the existing and proposed rates and the revenue per ton per mile under them as follows:

	Class.					
	1	2	3	4	5	6
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Class rates per 100 pounds.....	25.0	22.0	19.5	12.5	9.5	8.0
110-miles revenue per ton per mile.....	4.54	4.0	3.54	2.27	1.72	1.45
Proposed rates.....	20.0	17.0	12.5	8.5	7.5	6.0
Revenue per ton per mile under proposed rates.....	3.63	3.1	2.27	1.54	1.36	1.1

In its opinion, the Commission said, at page 509:

We can not condemn the rates complained of without also condemning the whole system of rates as constructed under the central freight association mileage scale, since these rates are made in substantial conformity thereto, and it is evident that any readjustment of the Indianapolis rates, even if it did not affect the rates generally applied throughout this territory, must necessarily result in a disturbance of the rates at least in territory intermediate between Chicago and Cincinnati.

In conclusion, the Commission held that no showing had been made that the existing rates were relatively unreasonable or unjust or that they yielded to the carriers excessive earnings for the transportation service. It will be noted that the class basis in central freight association territory then in force is the same as is in effect to-day, except that the first-class rate has been reduced one-half cent.

We think it is apparent that the same reasons which prompted the Commission to refuse to reduce the class rates in the *Indianapolis Freight Bureau case*, *supra*, argue to-day in favor of the elimination from Nappanee of the commodity rates and the restoration of the class basis. It will be seen that the facts as stated by the respondent are substantially correct. It appears that Nappanee, a local point, is to-day a favored spot in central freight association territory, so far as furniture rates are concerned. The continuance of such rates places other points at a corresponding disadvantage.

The complainants contend that they invested money on account of the present rates and during the long period such rates were in force they built up their business. Therefore, they argue, the respondent is not entitled to substitute the higher class rates. But these facts in themselves do not prove that the commodity rates are reasonable and that the proposed class rates are excessive.

The commodity rates were forced by competitive conditions heretofore referred to and the respondent apparently had no control over such conditions. There is no showing that the proposed rates are unreasonable. On the contrary, the Commission has approved class rates similar to the scale which the respondent proposes to apply from Nappanee. It is true that the restoration of the class rates may have an adverse effect upon complainants' business west of Chicago, but that fact can not serve to deprive the respondent of the right to publish and collect reasonable and nondiscriminatory rates. The respondent's proposed rates apply only to Chicago; it does not make the rates beyond and is in no way responsible for them. If the complainants are placed at a disadvantage in competing for western business because of their geographical location that is a matter which we can not correct.

From our consideration of all the facts of record we are of the opinion that the respondent has justified the propriety of the proposed restoration of class rates from Nappanee to Chicago and that the orders of suspension should be vacated. An order in accordance with these conclusions will be issued.

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INVESTIGATION & SUSPENSION DOCKET NOS. 114, 114-A, 114-B, AND
114-C.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF FLAXSEED FROM MINNEAPOLIS, MINN., AND OTHER POINTS TO CHICAGO, ILL., AND OTHER DESTINATIONS.

Submitted November 3, 1912. Decided December 2, 1912.

The tariffs under suspension advance the proportional rates on flaxseed in carloads from Minneapolis and other points to Chicago and other points; *Held*, That under all the circumstances the proposed advances are just and reasonable.

W. P. Trickett for Minneapolis Civic & Commerce Association.

R. B. Scott and *G. P. Lyman* for Chicago, Burlington & Quincy Railroad Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company and St. Paul & Kansas City Short Line Railway Company.

Kenneth Taylor for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

F. M. Miner for Minneapolis & St. Louis Railroad Company.

J. G. Morrison for Chicago Great Western Railroad Company.

J. T. Conley for Chicago, Milwaukee & St. Paul Railway Company.

Richard L. Kennedy for Chicago, St. Paul, Minneapolis & Omaha Railway Company and Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

In this proceeding we have under review the propriety of advances in the proportional rates on flaxseed in carloads from Minneapolis, St. Paul, Duluth, and Winona, Minn., and La Crosse, Wis., to Chicago, Ill., St. Louis, Mo., and other destinations, suspended by the Commission in its orders dated May 28, June 6, and June 22 to September 28, 1912, and further suspended on September 16, 1912, to March 28, 1913.

While numerous schedules have been suspended, the rate of chief interest is that applying from Minneapolis to Chicago which has been advanced from 7½ to 10 cents per 100 pounds. Since all of the rates involved are based upon this one and are applicable under the same

conditions, it will be convenient to use it as typical for the purpose of this report. The present rate is a proportional which can be used only upon the surrender to the outbound carrier of an expense bill showing the payment of an inbound rate of 10 cents or more, which added to this $7\frac{1}{2}$ -cent rate protects the through rate of $17\frac{1}{2}$ cents applying from intermediate territory. For example, if the expense bill presented to the outbound carrier showed that an inbound rate of only 8 cents had been collected, then the $7\frac{1}{2}$ -cent proportional would not apply, but the outbound rate would be $9\frac{1}{2}$ cents. Practically no flaxseed, however, moves into Minneapolis on a rate less than 10 cents, and furthermore the volume of flaxseed moving out is so small compared with the amount moving in that there are always on hand sufficient inbound expense bills showing a rate of 10 cents or greater to cover all the outgoing flaxseed, so that it may be said that the $7\frac{1}{2}$ -cent proportional applies on all flaxseed moving from Minneapolis to Chicago. The proposed advance would apply under the same conditions as the present rate, except that a paid expense bill of $7\frac{1}{2}$ cents or greater instead of 10 cents or greater would then be sufficient to protect the through rates from intermediate points.

Such proportional rates on flaxseed from Minneapolis have been in effect for many years. Prior to January 31, 1901, the rate to Chicago was 10 cents. On that date it was reduced to 8 cents, and a year or two later it was further reduced to $7\frac{1}{2}$ cents which rate has been effective ever since. There was much controversy at the hearing as to the reason for these reductions. The complainants offered two explanations. It was stated that this reduction was made to take the place of transit privileges which had been allowed at Minneapolis in connection with the through rates to Chicago and which were withdrawn just before the $7\frac{1}{2}$ -cent rate was established. Further it was stated that water competition via Duluth had forced the rail carriers to reduce the all-rail rate to the present amount. Respondent's witnesses expressed the opinion that water competition had played little, if any, part in the adjustment and that the reduction was first made by the Wisconsin Central Railroad Company, whose lines did not reach any of the flaxseed-producing territory, in an effort to attract part of the all-rail business, and that this reduction by one line forced all the other carriers to do likewise. It may be said, however, that water competition was undoubtedly one of the reasons, if not the controlling reason for the making of the reduction, and so far as the record shows, this competition is as effective to-day as it was in 1902.

The merits of the proposed advance can be better judged after a brief review of commercial conditions in the flaxseed industry during the past 10 years. When the present rates became effective Chicago was the leading flaxseed market of the country. The great bulk of the crop

was raised in western Iowa and South Dakota, and most of it moved through Minneapolis to Chicago by rail and lake or all rail. Since that time, however, the field of production has gradually moved northward for the reason that the crop is raised chiefly from new land. To-day the production within the United States is largely in North and South Dakota and parts of Minnesota and much of the crop does not come to Minneapolis at all but is moved from point of production direct to Duluth where it is consumed locally or reshipped to Buffalo, N. Y., Chicago or other crushing centers. Furthermore the milling of the product no longer centers in Chicago but is conducted extensively in Minneapolis itself, as well as in Duluth, Buffalo, and New York. Formerly practically all the flaxseed moving into Minneapolis was later shipped out, but as the record shows, at present 85 per cent of the flaxseed moving into Minneapolis is consumed there by the great crushing plants and only about 15 per cent moves out. There were no figures offered to show the decline in the movement of flaxseed from Minneapolis to Chicago alone but the decline in the movement from Minneapolis via all lines to all points is shown by the following table:

Skipped from Minneapolis.

	Bushels.
1907.....	5,003,000
1908.....	2,609,000
1909.....	1,802,000
1910.....	1,446,000
1911.....	1,088,000

It is evident that since the present proportional rates were introduced, Minneapolis has to a considerable extent, changed from a reshipping to a consuming market for flaxseed, and whereas its activity in the flaxseed industry when these rates were established, consisted chiefly in selling flaxseed in competition with Duluth, to the Chicago crushers, its activity to-day consists in competing with the Chicago crushers in the manufacture of linseed oil and cake. A further change in the flaxseed industry in this period has been a very considerable rise in the value of flaxseed. We have seen, then, that since these rates were established, the movement of flaxseed from Minneapolis has fallen off and the value has increased.

By way of justifying the proposed advances, the respondents also urged that the present flaxseed rates are unremunerative. It was stated that the total movement of flaxseed on the Chicago, St. Paul, Minneapolis & Omaha Railway between October 1, 1911, and May 12, 1912, amounted to 1,178 tons and during this period the damage claims on flaxseed amounted to \$459.97, or almost 2 cents per 100 pounds. No other figures were offered along this line but it was stated by several expert witnesses for the carriers that the claims for damage to flaxseed were greater per bushel than on other grains. Furthermore, the Chi-

cago Great Western Railroad, the Chicago, Rock Island & Pacific Railway, and the Chicago, Burlington & Quincy Railroad companies which participate in this traffic do not operate lines from Minneapolis to the flaxseed-producing territory, so that they must absorb a charge at Minneapolis for switching from the tracks of the inbound carrier to their own which amounts to one-fourth of a cent or more per 100 pounds and at Chicago if delivery is to be made at a warehouse not on the tracks of the delivering carrier, it must absorb this switching expense which amounts to $1\frac{1}{2}$ cents per 100 pounds. The mileage from Minneapolis to Chicago varies from 410 miles via the Chicago, St. Paul, Minneapolis & Omaha Railway to 523 miles via the Chicago, Rock Island & Pacific Railway. Using the short-line mileage, the ton-mile earnings on the present $7\frac{1}{2}$ -cent rate amount to 3.6 mills. After the switching charges above described are absorbed and allowance is made for damage claims it will be seen that, even over the short line, the margin of profit, if any remains, on much of this traffic is very small.

The carriers further contended that the present proportional rates on flaxseed were abnormally low as compared with the rates on wheat and coarse grain. The record shows that flaxseed during the past two years sold for more than twice as much per bushel as wheat, three to four times as much as barley, and four to five times as much as oats, and while it was urged that the price of flaxseed during this time had been high owing to short crops, it is clear from the record that at all times flaxseed brings at least as high a price as wheat and much higher than coarse grains. Besides, it was stated by several witnesses for the respondents, and not controverted, that flaxseed is more liable to leak than other grains, and for that reason a better grade of equipment is required for this traffic. Furthermore, the record shows that the volume of this traffic from Minneapolis is small as compared with the total movement of grain. Exhibits were filed by the carriers to show that the rates on flaxseed generally are higher than those on coarse grains and at least as high, and in some cases higher, than those on wheat. Even from Minneapolis to Chicago the local rate on flaxseed is $17\frac{1}{2}$ cents and on wheat only 15 cents. An examination of these exhibits suggests that several of the flaxseed rates used for comparative purposes by defendants are probably paper rates, yet it is apparent that, as a rule, the flaxseed rates both local and proportional are at least as high as the wheat rates, and it is our conclusion that in view of the relative value, relative risk, and relative volume of traffic of flaxseed as compared with coarse grain and wheat the flaxseed proportionals from Minneapolis may properly be as high as those on wheat.

The complainants have urged that Minneapolis is still active in the merchandising of flaxseed and that this branch of its industry will be ruined if the proposed advances are allowed, since the Chicago

crushers and others who might buy the seed at Minneapolis could get it cheaper by purchasing at the point of production and shipping direct to their crushers at the through rate. To this the carriers reply that Minneapolis will still have the alternative of shipping by rail and lake via Duluth to Chicago at a rate approximately the same as the present proportional. As we have seen, only about 15 per cent of the flaxseed moving into Minneapolis is merchandised out and part of this now moves via rail and lake. It does not appear what part now moves all rail to the points herein involved, but it is apparent that the volume of flaxseed merchandised from Minneapolis that moves under the rates now in question is comparatively small. This traffic, of course, however small, is entitled to a reasonable rate, but its alleged necessities can not be urged as a reason why the carriers should be required to maintain rates which were established to meet other conditions and which we find to be unduly low to-day.

It appears that perhaps the chief reasons why Minneapolis shippers have objected to these advances is not because of the advances on flaxseed considered by themselves, but because it is feared they would furnish a justification for advancing the rates on flaxseed products. At the hearing a witness stated that a representative of one of the carriers had told him that the present advances were to be used to justify advances to be attempted in the rates on linseed oil. Since complaints were filed against the advances now in question, the rates on linseed oil from Minneapolis have also been advanced, are now under suspension, and will be considered in Investigation and Suspension Docket 124. In passing upon the proposed advances on flaxseed, we have not been influenced at all by considering what effect, if any, these advances might have on the rates on flaxseed products, but have considered the reasonableness of the advances herein involved solely on their own merits. When we come to consider the proposed advances on linseed oil, needless to say, we shall not be influenced by any pretexts that may be offered to justify them, but if it be shown that the advances on flaxseed which we find herein to be reasonable tend to justify corresponding advances in linseed-oil rates, due weight will be given to that consideration. It would seem, however, that the manner of shipment, the tonnage, and the value, as well as the commercial conditions affecting the shipment of the two commodities from Minneapolis, are so different that the two classes of rates have no necessary relation to each other.

We are of the opinion that the carriers have fairly sustained the burden of showing that the advanced rates proposed in the suspended tariffs involved herein are, upon the whole, just and reasonable, and we find no undue discrimination against Minneapolis. The orders suspending the advances will be vacated and the suspended tariffs allowed to take effect.

No. 3558.
SUPERIOR COMMERCIAL CLUB, OF SUPERIOR, WIS.,
v.
GREAT NORTHERN RAILWAY COMPANY ET AL.

No. 3754.
CHAMBER OF COMMERCE OF THE CITY OF MILWAUKEE
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

No. 3938.
DULUTH BOARD OF TRADE
v.
GREAT NORTHERN RAILWAY COMPANY ET AL.

Decided December 2, 1912.

Prior orders herein are rescinded and other orders entered in conformity with the original report as here amplified or modified.

SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Our original report is in 24 I. C. C., 96.

Defendants filed tariffs containing revision of the rates involved in these proceedings in accord with what they conceived to be the application and intent of our orders. Protests were received from several of the interested markets alleging that our orders had not been complied with, and further hearing was had thereon.

The important features of the tariffs that were objected to were as follows:

(a) The rates on flaxseed were not revised, although the rates on flaxseed and other seeds were complained of and were the subject of testimony.

The rates were discussed in briefs, in argument, and in our report under the generic term "grain." It is conceded by defendants that the flaxseed rates should have been revised, and they are being

revised in a recheck of the general adjustment. What is said herein as to rates on grain is to be understood as including flaxseed and other seeds.

(b) In many instances the differentiation between rates on wheat and on coarse grain, or on grain and flaxseed, from a given point was not the same to the complaining markets.

This criticism is admitted to be just, and we understand that defendants are willing to maintain as far as possible the same differentiation to the complaining markets. It appears that there are some half dozen stations in the neighborhood of Scotland, S. Dak., where at the present time it is impossible to entirely eliminate such differences without increasing the rates from those stations to Minneapolis, Minn. We are not disposed to require at this time the changes necessary to effect that result at these few stations; but, excepting as to them, we hold that where there is a difference between the rate on wheat and on coarse grain, or on flaxseed and other grains, from a given point to Duluth-Superior that same relative difference shall be maintained to Milwaukee, Wis., and vice versa.

(c) In our original report we found that the differential at the junction point of a carrier's own lines should not be exceeded from points beyond that junction from which the traffic moves through that junction. In checking in these rates it develops that on the line of the Great Northern Railway Company from Forbes, N. Dak., in common with other east-and-west lines in that section, the rates are the same to Minneapolis and to Duluth. From Rutland, N. Dak., a station on this line, a branch line runs to Aberdeen, S. Dak., from which point the rates to Duluth are 2 cents per 100 pounds higher than to Minneapolis. Complainants urge that inasmuch as the rates are the same to Minneapolis and Duluth at the junction point, Rutland, they should be the same from Aberdeen, a point beyond the junction. This would, we think, be so were it not for the inevitable effect upon practically all of the rates from South Dakota. Aberdeen is a highly competitive point reached by the lines of several carriers, most of which must haul the grain to Minneapolis or to Duluth via circuitous routes, and we are of the opinion that in this instance the general principle announced may be departed from by the Great Northern to the extent of maintaining from Aberdeen rates to Duluth not more than 2 cents per 100 pounds higher than to Minneapolis. These rates are not controlled by any junction point differential other than the absence of a differential at Rutland, and the differential should be graded up gradually from one-half cent to the maximum of 2 cents, hereby authorized, at Aberdeen.

The same question arises as to stations on the Huron branch of the Great Northern, where the differential is one-half cent greater than

from Benson, Minn., the junction point. Defendants assert that the rates from Morris, Minn., a point north of Benson, are fixed by the direct line of the Northern Pacific Railway Company. The Great Northern can not maintain higher rates from Benson than from Morris without violating the fourth section of the act, and it would profit Duluth nothing if the Great Northern were to retire from competition at Morris, as it would have to do if its rates were made higher than those of the Northern Pacific. This branch line runs through Watertown, S. Dak., which is a highly competitive point, and reaches Huron, also a competitive point. This traffic moves through Willmar, Minn., from which point we have approved a differential of 3 cents. The differential is not more than 3 cents from any point beyond Benson to and including Huron. For the reason stated the differential at Benson is 2.5 cents. We think that this general principle may be departed from by the Great Northern in this instance to the extent of maintaining from points on the Huron branch differentials which exceed those obtaining at Benson by not more than one-half cent per 100 pounds, and which do not exceed the differential at Willmar.

(d) It is alleged that some of the defendants observe the long-and-short-haul provision of the fourth section with regard to the rates to Minneapolis and violate it in the rates to Duluth. All of these fourth-section questions were and are covered by general applications filed in accordance with the provision of the amended fourth section and not yet passed upon. Defendant Chicago & North Western Railway Company has at our request furnished specific and concise statement of the extent to which it is deemed necessary to violate the long-and-short-haul provision in the rates to Duluth as the only alternative of withdrawing from the competitive traffic at a number of points of origin. We have decided that the Chicago & North Western is entitled to such relief, from its stations Oakes, N. Dak., to Redfield, S. Dak.; Groton to Doland, S. Dak., and Redfield to Watertown, S. Dak., all inclusive, not exceeding 2 cents per 100 pounds. This will be provided for in an appropriate fourth section order, and defendant Chicago, Milwaukee & St. Paul Railway Company will be accorded like relief upon the same principle from its stations that are similarly located.

(e) In establishing rates to Milwaukee on the one hand and Duluth-Superior on the other hand, based on the principle of comparative distances, defendants took the short lines of either the North Western system or the Chicago, Milwaukee & St. Paul system to Milwaukee and to Duluth-Superior, and computed the difference in the rates upon the basis of the difference in distance via such short lines. This was criticized.

If each system must fix its rates upon the distances via its own rails the shorter line to one market, having the lower rates thereto,

would get all the grain from that point for that market, and the competition of the longer line would be eliminated. This would be unjust to the carriers and an unnecessary hardship upon the markets as well as upon the producers, for which no compensating advantage is possible. It perhaps would not reduce the total amount of grain moved, but it would prevent fair, open and desirable competition between carriers, producing points, and markets. The principle of making the rates with relation to the respective short-line distances from competitive points is therefore approved.

(f) Defendants grouped with points that are competitive, in the sense that they are actually reached by the rails of both systems, near-by points which are necessarily affected by cross-country check, and criticism of that was presented.

As pointed out in the original report, if the grain grower is located at substantially equal distances from stations on two systems of road he will naturally haul his grain to the station from which it bears the lower transportation charge. The cross-country competition is therefore very important and should be recognized, as well as that at the points actually reached by the rails of the competing carriers. We think that in applying this principle defendants made some of their groups larger than is reasonable, and it is expected in the revision of these rates that such groupings will be made smaller and kept within the limits of entire consistency. It seems desirable and in no way disadvantageous to either the markets or the growers to have points of production that are close to each other and affected by the same elements of competition and transportation conditions grouped under a common rate, and where such grouping is reasonably done the shorter distances to the markets in question may be determined by the average distances from the points reached by both systems within a given group. Where there is but one such point in a group the distances should be computed from that point, and where there is no such point in a group the distances should be computed from a point that is substantially centrally located in the group.

(g) From some points in South Dakota the rates to Milwaukee and to Duluth-Superior, respectively, were not based strictly upon the difference in the distance.

It develops that from some points in northern South Dakota where the rates to Duluth are made 4 cents over Minneapolis in accordance with finding in our original report, it is not possible to make the rates to Milwaukee exactly with relation to the difference in distance without making the rates to Milwaukee higher than the available combination on Minneapolis. Milwaukee and Chicago now have, and for a long time have had, common rates on this traffic. There is a long-maintained proportional rate of $7\frac{1}{2}$ cents per 100 pounds on coarse

grain from Minneapolis to Chicago or Milwaukee. This is a highly competitive rate, but is maintained 1 cent higher than the proportional rate of the Soo Line of $6\frac{1}{2}$ cents from Minneapolis to Gladstone, Mich., a Lake Michigan port. If the through rate to Milwaukee exceeds the combination on Minneapolis manifestly no through shipments would be made, and thus all of the grain from such points would stop at Minneapolis. From this part of South Dakota the through rates on wheat and coarse grains are generally if not universally the same. It being impossible to make the through rates on coarse grain to Milwaukee strictly on the basis of difference in mileage without making them higher than the combination on Minneapolis, and the rates on coarse grains and on wheat being the same, it follows that the same rule must apply to wheat, inasmuch as wheat uniformly takes no lower rates than coarse grain. We think, therefore, that from these stations, where the Duluth rate is made 4 cents over Minneapolis, the strict distance principle may be departed from, but where that is necessary the rate to Milwaukee may not be lower than the distance would fix, except to the extent necessary to avoid making that rate higher than the combination on Minneapolis.

From points of origin from which the distance to Milwaukee is substantially greater than that to Duluth-Superior or substantially greater to Duluth-Superior than to Milwaukee, the rates should be made with due regard and proper relation to the added distance, observing to Duluth-Superior the limitation of not to exceed 4 cents per 100 pounds above Minneapolis, and to Milwaukee the combination on Minneapolis as maxima. When in such instances it is necessary in order to avoid violations of the fourth section of the act or to properly meet cross-country competition, junction-points of origin may be consistently placed in small groups.

(h) Defendant Minneapolis & St. Louis Railroad Company has north-and-south lines from Winthrop, Minn., to Storm Lake, Iowa, crossing the Iowa & Dakota division of the Chicago, Milwaukee & St. Paul at Spencer, Iowa, and from Minneapolis south through Albert Lea, Minn., and Marshalltown, Iowa, crossing the same division of the Chicago, Milwaukee & St. Paul at Mason City, Iowa. The Chicago, Milwaukee & St. Paul has a north-and-south line closely paralleling the last-mentioned line of the Minneapolis & St. Louis, from Mason City to Lyle, Minn. The Minneapolis & St. Louis is the short line from all of this territory to Minneapolis and, with its connections, is the short line to Duluth. It joins in joint through rates to both Duluth and Milwaukee, and it urges that inasmuch as it is the short line to Minneapolis and Duluth, the distance via its line should be taken into consideration in determining the rates from these northern Iowa points. If its position and interests are ignored

it will be forced to reduce its rates to Milwaukee and to turn the traffic over under those reduced rates to its competitors without being able to secure earnings that are at all commensurate with its earnings if it has the haul to Minneapolis. It urges its inability to withstand reduction in its revenues, and in other proceedings before us we have found this to be true.

We think that in the readjustment the rates from stations in Iowa on and east of the line of the Minneapolis & St. Louis from Winthrop to Spencer, on and north of the line of the Chicago, Milwaukee & St. Paul from Spencer through Algona to Mason City, and on and west of the line of the Chicago, Milwaukee & St. Paul from Mason City through Lyle, Minn., may be made with relation to the short-line distances to Duluth via the Minneapolis & St. Louis and its connections as compared with the short line of the North Western or Chicago, Milwaukee & St. Paul systems to Milwaukee.

The rates from other stations in Iowa on the North Western or Chicago, Milwaukee & St. Paul systems to Milwaukee and to Duluth-Superior, respectively, should be made on the same principle and basis as those from South Dakota and Minnesota.

(i) As stated, the long-maintained rate adjustment puts Chicago and Milwaukee on a common-rate basis. Complaint was made that in establishing the newly adjusted rates to Milwaukee on less than full statutory notice under our order, defendants also included like increases in rates to Chicago. The new rates of the Chicago, Milwaukee & St. Paul from South Dakota and Minnesota to Milwaukee and Chicago were suspended by the Commission, and the North Western, under permission from the Commission, withdrew such rates filed by it pending the recheck. The proposed new adjustments from Iowa points which were filed later than the new rates from South Dakota and Minnesota were suspended by the Commission for the same reasons. It is not suggested by anyone that it is desirable to destroy the long-established parity of rates to Milwaukee and Chicago. Defendants are hereby given permission to make the new rates to Milwaukee applicable also to Chicago, and to other points which take Chicago or Milwaukee rates on this traffic, upon the notice required as to Milwaukee in the orders herein. Some complainants criticized the taking of Milwaukee as a basis for computing the differences in distance. That was done in part because Duluth and Superior complained that their rates were higher for equal distances than the rates to Chicago and Milwaukee, and Milwaukee complained that from certain territory the rates to Milwaukee were higher for the same distances than to Duluth-Superior, and in part because from the South Dakota and Minnesota stations the distances via the lines of the North Western

and the Chicago, Milwaukee & St. Paul are generally somewhat greater to Chicago than to Milwaukee, while other carriers whose lines reach a very substantial portion of this territory in Minnesota, Iowa, and South Dakota and do not reach Duluth or Superior have the same rates to Chicago and to Milwaukee while their distances to Milwaukee are greater than to Chicago. The distance to Superior is slightly less than to Duluth, and it is our understanding that defendants have computed the distances to Superior and to Milwaukee. We adhere to the conclusion that the differences in rates should, except as modified herein, be based upon the differences in distances as between Milwaukee and Superior.

(j) The Minneapolis interests have filed petition for rehearing which is based largely upon allegations as to the effect which our findings will have upon that market. As stated and as is well known, the rivalry between all of the large or so-called primary grain markets is keen. We have not required any reduction in the general level of the rates on grain from this large territory of production. We have not required any changes in the rates to Minneapolis. We have required the establishment and maintenance of rates to Duluth-Superior via Minneapolis not more than 4 cents higher than to Minneapolis; and have fixed the maximum differential at Willmar on the Great Northern, as between Duluth and Minneapolis, at 3 cents. We are convinced that these findings are correct. We have done nothing here which interferes with the proportional rates from Minneapolis. We have required what we believe to be an equitable adjustment as between Milwaukee and Chicago on the one hand and Duluth-Superior on the other hand. If such equitable adjustment has the effect of sending to those markets some of the grain which has been accustomed to go to Minneapolis, that is no reason why justice should be withheld from the other markets. It is well established that we may not make the needs of the shipper the basis of reasonable rates. If removal of unjust discrimination between other markets somewhat injuriously affected Minneapolis, that fact would be no excuse for permitting the unjust discrimination to continue. We have recognized the interests of and the rates to Minneapolis in the section of northern Iowa from which the Minneapolis & St. Louis is the short and direct line to Minneapolis. We see no reason for reopening these cases, and the Minneapolis petition for rehearing is therefore denied.

Our orders herein of June 3, 1912, will be rescinded, and orders in conformity with our original report as here amplified or modified will be entered. Of course the orders will bear effective dates in conformity with the requirements of the statute, but we think that under the circumstances the rechecked rates should be made effective as early as possible.

INVESTIGATION AND SUSPENSION DOCKET No. 103.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF PETROLEUM OIL AND OTHER COMMODITIES FROM WELLSVILLE, N. Y., AND OTHER POINTS TO CINCINNATI, OHIO, AND BETWEEN OTHER POINTS.

Submitted October 31, 1912. Decided December 3, 1912.

Proposed increased rates on petroleum and its products from refineries in so-called Buffalo group to points in southern Ohio and Indiana found to be unreasonable and unjustly discriminatory. Tariffs under suspension required to be withdrawn.

C. D. Chamberlin for National Petroleum Association, protestant.

D. P. Connell, William W. Collin, jr., O. E. Butterfield, and Clyde Brown for New York Central lines.

F. L. Ballard for Pennsylvania Railroad Company.

Guy Wellman for Buffalo & Susquehanna Railroad Company and Buffalo & Susquehanna Railway Company.

S. P. McChesney for the Terminal Railroad Association of St. Louis, St. Louis Merchants Bridge Terminal Railway, Wiggins Ferry Company, and Interstate Port Transfer Company.

E. Brooker for Erie Railroad Company.

Edward A. Neil for Buffalo, Rochester & Pittsburgh Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

This case involves proposed advances of from one-half cent to 1½ cents per 100 pounds on carload shipments of petroleum and its products from refining points in the so-called Buffalo group north of and not including Oil City, Pa., to points in central freight association territory, located generally in southern Ohio and Indiana.

By petition, dated April 16, 1912, the National Petroleum Association, a voluntary organization whose members are engaged in refining, selling, and shipping petroleum and its products, protests against the proposed advances in rates and alleges that such increased rates are unjust and unreasonable and subject its members to unjust discrimination and undue and unreasonable prejudice and disadvantage.

The increased rates are contained in the following tariffs: Buffalo & Susquehanna Railway and Buffalo & Susquehanna Railroad, (H. I. Miller, receiver), I. C. C. No. A-330; Buffalo, Rochester & Pittsburgh Railway, supplement No. 6 to I. C. C. No. 3437; Dunkirk, Allegheny Valley & Pittsburgh Railroad, I. C. C. No. 726; Erie Railroad, I. C. C. No. 9881; Lake Shore & Michigan Southern Railway, I. C. C. No. A-2818; and Pennsylvania Railroad, G. O., I. C. C. No. 3796. By order of April 26, 1912, these schedules were suspended until August 29, 1912; and on June 3, 1912, were further suspended until February 28, 1913.

The Buffalo group has, for some time, extended south 40 or 50 miles below Oil City and Franklin, Pa. The suspended tariffs narrow this group by moving the southern boundary above Oil City and Franklin, and it is only to this narrowed group that the increases apply, no advances being proposed in the rates from the southern portion. The oil rates in all of this territory have heretofore been made 90 per cent of the fifth-class rate. Complaint to the carriers by Pittsburgh and Erie shippers against the class rates from Buffalo to central freight association territory, on the ground that such rates to southern Indiana and Ohio were not constructed on the proper mileage scale, led to a readjustment, effective May 1, 1912, resulting in some reductions in the class rates from Erie and Pittsburgh, Pa., and slight advances from Buffalo, N. Y. These advances, however, did not apply to the entire Buffalo group principally because of refusal of the Erie Railroad Company to increase the Oil City rates, this action being prompted by a consideration of competitive conditions which, in its opinion, necessitated the keeping of Oil City on a parity with Erie, Pa., about 79 miles to the northwest. Consequently, whatever reductions were made from Erie were also made from Oil City, and the southern limit of the Buffalo group, from which advances in class rates were made, was drawn between Oil City and Titusville, Pa. Franklin, Pa., a few miles from Oil City, is the site of a large refinery of the Standard Oil Company and was included in the group with Erie and Oil City. To preserve its relation to the fifth-class rate similar reductions and advances were made in the oil rates.

It is admitted that no complaint received by the carriers was specifically directed against the adjustment of oil rates, and that no particular consideration was given them when these increases were contemplated.

The protestant showed that the old rates have been in effect for a considerable number of years and claim that the oil business has adjusted itself to such rates, the long-continued maintenance of which is a strong indication of their reasonableness. It was testified on behalf of protestant that, owing to the character of the oil business the movement of the commodities involved in this case was more or

less spasmodic and that, therefore, statements filed by the carriers of the movement during certain specific months was not truly illustrative of the volume of traffic. From these statements, however, we gather that there is considerable carload tonnage from refineries in the Buffalo group to central freight association destinations, and the movement from Franklin and Oil City to the same destinations indicates that there is keen competition between refineries located there and those located at Titusville and points north. Protestant also offered testimony to show that the oil business is conducted on very close margins, the bulk of profit being represented by one-eighth of a cent a gallon and that a difference in rates of $1\frac{1}{2}$ cents per 100 pounds, which approximates one-eighth of a cent per gallon, or, in fact, any difference, between districts producing the same general quality of oil, such as the Buffalo group north of Oil City, and the Oil city district, would determine where purchases would be made.

Respondents' only justification for the increased rates was the history of the class-rate adjustment and the contention that as oil had theretofore taken 90 per cent of the fifth-class rate, it should continue to take the same percentage of the increased fifth-class rate. No attempt was made to determine the reasonableness of the oil rate either before or after the proposed advance and while there might have been reasons justifying the increases in the class rates it is not shown that any of these considerations necessarily relate to the oil rates.

Upon a consideration of all the facts and circumstances of record we are of opinion that the respondents have failed to sustain the burden of showing that the proposed increased rates on petroleum and its products are just and reasonable. We are also of opinion that the proposed rates would work an unjust discrimination against the points at which increases are contemplated, in favor of points at which no increases are sought to be made. Respondents will therefore be expected to withdraw the tariffs now under suspension and the case will be held open for an appropriate order in case this is not promptly done.

There were included in the suspended tariffs increased rates on acids, ammoniacal liquors, aqua ammonia, and gas liquor, against which no complaint was made and which were suspended only because they were included in the tariffs with petroleum and its products. These rates are not involved in this proceeding and carriers are at liberty to republish them, subject, of course, to future attack.

25 I. C. C.

No. 4695.
S. J. GREENBAUM COMPANY
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 1952.

Submitted November 16, 1912. Decided December 2, 1912.

Rates on distillers' dried grain in carloads from Midway, Ky., to Norfolk or Newport News, Va., when for export, found to be unduly discriminatory as compared with rates on same commodity to same destinations from Louisville, Ky.

W. H. Ellis, R. G. Donaldson, and C. B. Ellis for complainant.

W. A. Northcutt and A. S. Brandeis for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a distilling company at Midway, Ky. Complaint alleges that the rate of 17 cents per 100 pounds on distillers' dried grain in carloads from Midway to Norfolk and Newport News, Va., for export, is unduly discriminatory against Midway and complainant and in violation of the long-and-short-haul provision of the fourth section of the act, in that defendants charge 11 cents per 100 pounds on the same commodity in carloads from Louisville, Ky., to the same ports for export, Midway being 80 miles east of Louisville and directly intermediate between Louisville and Norfolk and Newport News.

Distillers' dried grain is a by-product produced in distilling, is generally used as feed for cattle, and finds its principal market in Germany. Its value ranges from \$18 to \$28 per ton at the distillery. Complainant's principal competition in the sale of distillers' dried grain is with the distillers of Louisville, and it is unable to secure any higher price than is secured by the Louisville distiller, who pays the lower rate.

Defendant Louisville & Nashville Railroad Company has on file an application for relief for itself and its connections from the provisions of the fourth section. In so far as that application, No. 1952, concerns rates on distillers' dried grain from Louisville and Midway to Norfolk and Newport News, it was heard in connection with the complaint herein.

Under a contract between defendants Louisville & Nashville Railroad Company and Chesapeake & Ohio Railway Company the latter acquired the right to run its trains over the track of the former between Lexington and Louisville, Ky. This contract provides that the Chesapeake & Ohio shall not engage in traffic originating at or destined to points on that line between Lexington and Louisville. The Chesapeake & Ohio therefore denies that it holds itself ready to receive, or that it is liable to receive, shipments at Midway under any rate. It offered no testimony in this proceeding.

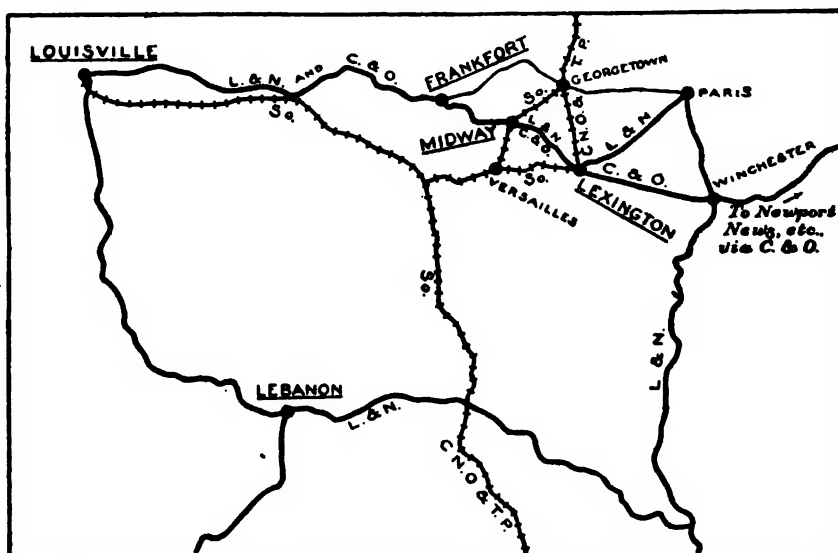
The rates from Louisville and Midway are joint through rates to which defendants are parties. Frankfort, Ky., is a few miles west of Midway and directly intermediate between Midway and Louisville. Georgetown, Ky., is a few miles northwest of Midway. Lexington is a few miles southeast of Midway. From these points the rates on distillers' dried grain are as follows: From Frankfort to Norfolk and Newport News 12 cents, domestic; from Georgetown to Norfolk and Newport News 12 cents, domestic, and to Norfolk 11 cents for export; from Lexington to Norfolk and Newport News 12 cents, domestic, and 11 cents for export. The domestic rate from Louisville is 12 cents. There is no joint through rate on domestic shipments from Midway to Norfolk and Newport News, but the combination on Lexington is 18 cents. Lebanon, Ky., a point on the Louisville & Nashville southeast of Louisville but more distant from Norfolk and Newport News than is Midway, has a domestic rate of 12 cents. It is admitted that if there were occasion for an export rate from Frankfort it would be made the same as that from Louisville. The accompanying sketch clearly indicates the situation.

Defendants allege that the rate from Frankfort was originally made by the Kentucky Midland Railroad Company which operated between Frankfort and Georgetown, where it had connection with the Cincinnati Southern. The records of the Commission show that this line passed into the control of the Louisville & Nashville, and was later divorced from that system by court decree. It is now the Frankfort & Cincinnati Railway. These changes of ownership did not result in changing the rate in question from Frankfort.

Defendant Louisville & Nashville presented a history of the adjustment of the rates in question from the points referred to, outlining what the trunk-line basis of rates would fix, and says that it is not responsible for the rates to or from Louisville "so far as those rates are on the trunk-line basis." Its witness testified, however, that in 1884 the lines leading from Louisville decided that they would depart from the trunk-line adjustment and would not charge higher rates from Louisville than from Cincinnati, Ohio, which seems clearly to establish that the rates from Louisville are the result of a

voluntary act on the part of the Louisville lines. It is stated that the Chesapeake & Ohio established the rates from Lexington because it did not feel justified in maintaining higher rates from Lexington than from Cincinnati, a more distant point on the same line.

It is urged that the contract by which the Chesapeake & Ohio acquired use of the Louisville & Nashville track, as construed in *Louisville & Nashville R. R. Co. v. C. & O. Ry. Co.*, 107 Ky., 191, constitutes a joint ownership. We do not think it within our province to determine the validity or legality of this contract. Neither carrier can use it as a shield against the obligations laid upon it by the statute. The Louisville & Nashville owns this track either by itself or in conjunction with the Chesapeake & Ohio. It has, and



uses, a direct connection with the Chesapeake & Ohio at Lexington. It joins in joint through rates over this track from Louisville through Midway, and also from Midway, to Norfolk and Newport News, for export. Presumably it makes no difference to complainant whether his shipments are moved by a Louisville & Nashville train or by a Chesapeake & Ohio train. We think that the question here presented may be treated the same as if no contract existed between the Louisville & Nashville and the Chesapeake & Ohio. The contract has had no effect upon the rates from either Louisville or Midway.

The Louisville & Nashville contends that Lexington having been given the Cincinnati rate by the Chesapeake & Ohio, a reasonable rate from Midway is the combination of the rates from Midway to Lexington and from Lexington to Norfolk or Newport News. It

asserts that even though it made the low rates from Louisville for reasons of its own, a like concession was made to Midway in that Midway was given rates made up of the lowest combination of rates, which system is followed to a greater or less extent by that defendant.

Attention is called to rates on distillers' dried grain from other points in Kentucky to Norfolk and Newport News which are as high as or higher than the rates from Midway, but the witness who presented these comparisons was unable to state that any distillers' dried grain was shipped from those points or that any distilleries were located there. Complainant testified that he had no competition from the points so referred to.

It is stated that the rates from Midway were published as joint through rates so that if the Louisville & Nashville received shipments at Midway for Norfolk, it could handle them by way of Norton, Va., in connection with the Norfolk & Western Railroad, thereby securing a longer haul than if it delivered them to the Chesapeake & Ohio at Lexington.

Defendants assert that in order to create undue preference to one place and unjust discrimination against another, there must be a voluntary grant of the preferential rate and a withholding of the same rate from the second place "by the same carrier." To this we do not assent. A carrier is responsible for unjust discrimination in rate adjustment as between two places if it serves both places or participates in their carrying trade. *Eau Claire Board of Trade v. C. M. & St. P. Ry. Co.*, 5 I. C. C., 264; *Bainbridge Board of Trade v. L. H. & St. L. Ry. Co.*, 15 I. C. C., 586; *Elk Cement & Lime Co. v. B. & O. R. R. Co.*, 22 I. C. C., 84.

The plant of complainant is located upon a sidetrack of the Southern Railway but it is reasonably accessible to the Louisville & Nashville, and complainant has shipped via the Louisville & Nashville, although it does not appear that it has shipped that way to Norfolk or Newport News for export. Whatever may be complainant's disadvantages in getting its traffic to the Louisville & Nashville, it has a right to ship via that route under reasonable and nondiscriminatory rates.

Distillers' dried grain is a low-grade commodity, and attention is called to lower rates via defendants' lines on corn-oil cake, linseed-oil cake, pig iron, and iron and steel blooms and billets. It is not contended that the rates of 11 cents for export or 12 cents for domestic shipments from Louisville, Frankfort, Georgetown, Lebanon, or Lexington are unremunerative. These points are in the same general territory in which Midway is located, and manifestly the transportation conditions must be substantially the same as to all of them. The distance from Louisville to Norfolk and Newport News via the
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Louisville & Nashville and Chesapeake & Ohio is about 718 miles; from Midway it is about 638 miles; and, as stated, Frankfort, Georgetown and Lexington are but a few miles from Midway. Lebanon is about 684 miles from Norfolk.

Upon the whole record it is our opinion, and we find, that the adjustment of the rates complained of is, and for the future will be, unjustly discriminatory against complainant and in favor of shippers from Louisville, to the extent that the rates from Midway to Norfolk or Newport News for export exceed the rates contemporaneously charged from Louisville to Norfolk or Newport News for export.

Coming now to the application of the Louisville & Nashville and others, for relief from the provisions of the fourth section of the act: There is comparatively little in the record aside from the statement of the situation that is helpful. As has been stated, the rates from Louisville were voluntarily established by the carriers. They have been long maintained. As was said in *In the Matter of Applications for Relief from the Operation of the Fourth Section in regard to Certain Rates on Salt*, 24 I. C. C., 192, 195, "It is difficult to imagine any case to which the inhibition of the fourth section would apply if it does not here."

We find no substantial or justifying reasons for charging higher rates on distillers' dried grain from Midway to Norfolk or Newport News than are contemporaneously maintained from Louisville, and that portion of the application of the Louisville & Nashville and other carriers, No. 1952, for relief from the fourth section is denied.

Orders in conformity with these views will be entered.

25 I. C. C.

No. 4757.

MICHIGAN COPPER & BRASS COMPANY ET AL.

v.

DULUTH, SOUTH SHORE & ATLANTIC RAILWAY COMPANY
ET AL.

Submitted October 26, 1912. Decided December 2, 1912.

The defendants maintain an all-rail rate on refined copper from points in the upper peninsula of Michigan to New York City that is 3 cents per 100 pounds higher than the all-rail rate from the same points to Detroit, Mich. The complainants allege that this differential is unduly low and that the all-rail rate of 82½ cents to Detroit is unreasonable. *Held:*

1. That the rate to Detroit is unjustly discriminatory as compared with the rate to New York City; that the defendants subject the complainants and the locality of Detroit to undue and unreasonable prejudice and disadvantage; and that for the future the differential should not be less than 10 cents.
2. That the rate to Detroit is not, under the present conditions, unreasonable.

Hal H. Smith for complainants.

A. E. Miller for Duluth, South Shore & Atlantic Railway Company; Mineral Range Railroad Company; and Copper Range Railroad Company.

W. C. Rowley and *D. P. Connell* for New York Central lines.

George C. Conn for Pere Marquette Railroad Company and receivers.

J. M. Davis for Chicago, Milwaukee & St. Paul Railway Company.

William H. Collin, jr., *O. E. Butterfield*, and *Clhde Brown* for Michigan Central Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainants, the Michigan Copper & Brass Company and the Detroit Copper & Brass Rolling Mills, both located at Detroit, Mich., are manufacturers of copper and brass products, consisting of copper, brass, and bronze sheets, rods, wire, tubes, bars, and plates. The raw material used by them is refined copper and spelter, and their complaint alleges that the differential of 3 cents per 100 pounds between the all-rail rates on refined copper from points in the upper peninsula of Michigan to Detroit and to New York, N. Y., constitutes an unjust discrimination against Detroit and places complainants at an undue disadvantage in competition with similar manufacturers

located at eastern points; it also puts in issue the reasonableness of the all-rail rate of 32½ cents on refined copper from points in the upper peninsula to Detroit.

The complainants' competitors are located mainly in the Naugatuck Valley at Bridgeport, Ansonia, Waterbury, Farmington, and Torrington, Conn. From 60 to 70 per cent of the total production of copper and brass products in the United States is manufactured at these points. The remainder of the production is scattered, the principal mills being at Rome and Buffalo, N. Y., New York City, Hastings upon Hudson, Perth Amboy, N. J., Pittsburgh, Pa., Kenosha, Wis., and those of the complainants at Detroit. These several mills sell their goods in competition at all points in the United States, the main points of consumption being in the eastern and central territories.

Raw copper ore is mined in three great fields, the Montana, Arizona, and Michigan upper peninsula fields. Upper peninsula copper is refined almost entirely at upper peninsula points. Of the western copper mined in the Montana field, a part is refined at Great Falls and Black Eagle, Mont., and a considerable portion comes east to refineries located at Perth Amboy, N. J., Chrome, N. J., and Laurel Hill, L. I. The Arizona copper is brought east and refined at Baltimore, Md. There is also a refinery at Tacoma, Wash., where copper from British Columbia is sent.

Refined copper is generally denominated either lake or electrolytic, dependent upon whether it is refined by the ordinary smelter or the electrolytic process, respectively. The upper peninsula copper is refined by the smelters and is used in the manufacture of all of complainants' products. Electrolytic copper is refined largely at eastern refineries and is employed for the same purposes as lake copper, but on account of its greater conductivity is more extensively used in the manufacture of copper wire.

The complainants use every year approximately 40,000,000 pounds of refined copper. The total annual consumption at Detroit is over 53,000,000 pounds, or approximately 1,100 cars of an average tonnage of 24.1 per car. This copper comes to Detroit from upper peninsula, Montana, and eastern refineries. Statements prepared by complainants show the following receipts of copper, in pounds:

Year.	Western copper from Montana refineries and Tacoma.		Copper from upper peninsula of Michigan refineries.		Eastern copper from eastern refineries.
	All-rail.	Rail-and-water.	All-rail.	Rail-and-water.	All-rail.
1910.....	4,097,587	6,789,998	1,661,288	6,802,187	17,620,896
1911.....	5,702,791	7,113,007	2,872,945	10,648,837	14,032,776
1912 (up to June 1).....	10,406,491	110,186	3,356,723	3,503,494	1,786,656

The amount shipped to other consumers in Detroit is not shown by the record. The comparatively large shipment of all-rail copper from the upper peninsula during the first five months of 1912, is probably to be accounted for by the fact that the closed season of navigation on the lakes, December 1 to March 31, comes at this time, during which period shipments of copper are made all-rail. The above table shows that during the two and a half years indicated the complainants received from upper peninsula and western refineries, a total of 28,100,825 pounds of copper all-rail, and 35,057,000 pounds by rail-and-water. Their total all-rail shipments, including those from eastern refineries, were 62,091,152 pounds. From upper peninsula points alone complainants' shipments, during these two and a half years, amounted to 7,890,956 pounds all-rail, and 21,044,518 by boat, a total movement of 28,935,474 pounds.

Only the movement of upper peninsula copper by rail is directly concerned in this case, and it is limited to the season during which navigation is closed on the great lakes, December 1 to March 31. Such movement to Detroit is via several routes. The Mineral Range and the Duluth, South Shore & Atlantic Railway Company handle the traffic to Mackinaw City, Mich., the first-named road hauling it but a short distance. At Mackinaw City it is taken by the Michigan Central Railroad Company or by the Pere Marquette Railroad Company and the Grand Rapids & Indiana Railway Company to Detroit. The Mineral Range connects with the Duluth, South Shore & Atlantic at Houghton, Mich. This movement is intrastate. The Mineral Range Railroad, however, connects with the Chicago, Milwaukee & St. Paul Railway Company at Champion, Mich., and through rates from Mineral Range points to Detroit are also published for the interstate route via the Chicago, Milwaukee & St. Paul and carriers connecting with that line at Milwaukee, Wis., and Chicago, Ill. Copper originating on the Mineral Range Railroad destined all-rail to New York moves only by the latter route. The Copper Range Railroad Company delivers all of its all-rail shipments of copper to the Chicago, Milwaukee & St. Paul at McKeever, Mich., whence they move via Milwaukee or Chicago to Detroit and New York.

The joint rate on all-rail shipments of copper from upper peninsula points to Detroit, during the season of closed navigation is 32½ cents effective over either the intrastate route via Mackinaw City or the interstate route via Chicago or Milwaukee. The joint all-rail rate from the same points to New York and points taking the New York rate, such as Perth Amboy, N. J., Newark, N. J., Jersey City, N. J., Rome, N. Y., and Hastings-upon-Hudson, N. Y., is 35½ cents. The summer rail rates, effective April 1 to November 30, are 25½ cents to Detroit and 28½ cents to New York and points taking the New York

rate. The low differential of 3 cents between the rate to Detroit and the rate to New York is the gist of this complaint.

The following table shows the distances, in miles, from copper-producing points on the lines of the Mineral Range and Copper Range Railroads to Detroit and to New York:

DISTANCES TO DETROIT.

From—	Via Mackinaw.	Via Milwaukee and Ludington.	Via Chicago.
Houghton, Mich.....	537	606	633
Dollar Bay, Mich.....	542	671	697
Lake Linden, Mich.....	548	678	698
Hancock, Mich.....	538	667	693

DISTANCES TO NEW YORK.

Houghton, Mich.....	1,230	1,359	1,333
Dollar Bay, Mich.....	1,235	1,364	1,337
Lake Linden, Mich.....	1,241	1,370	1,339
Hancock, Mich.....	1,231	1,360	1,336

Another available route to Detroit and New York is via Milwaukee, the Grand Trunk Railway system and Grand Haven, Mich. This route is 67 miles shorter than that via Milwaukee and Ludington, but the Grand Trunk is not named as a defendant in this proceeding. The difference in the distance to Detroit and to New York ranges from 640 to 693 miles, according to the route taken. For this additional haul the freight charge is increased by but 3 cents. During the years 1890 to 1899 the spread between the Detroit and New York rates ranged from 10 to 13½ cents; after 1899 it gradually contracted to 5 cents between the years 1903 to 1906 and 3 cents at the present time. Complainants' competitors at Connecticut points in the Naugatuck Valley pay a rate of 2 cents higher than the rate to New York.

During the open season of navigation copper from upper peninsula refineries moves over a lake-and-rail route to Detroit and New York. The lake-and-rail rate to Detroit is 8 cents and to New York 18 cents. As shown by the statement before given the movement of copper to Detroit via lake-and-rail is greatly in excess of the movement all rail; in fact 21,044,518 pounds of the total of 28,935,474 pounds that moved during the two and one-half years indicated were transported lake-and-rail. It appears from the testimony that the cost of copper is comparatively high and purchases are made in cash, and that consequently complainants were not able to store a large quantity for winter use, but were obliged to receive the balance of 7,890,956 pounds by the all-rail route during the winter months.

The complainants contend that the differential of 3 cents between the rate from the upper peninsula to Detroit and the rate from the same region to New York directly affects the cost of the lake copper

bought by them. All refined copper is purchased at a price per pound delivered in New York. The purchaser in Detroit deducts from his invoice the difference between the rate from origin to Detroit and the rate from origin to New York. During the summer period the differential between the rates for the rail-and-water route to Detroit and New York is 10 cents and consequently Detroit enjoys a corresponding advantage over New York in the prices paid for lake and western copper, but during the winter months when the differential is but 3 cents, New York buys its copper at a price but very little higher than that which complainants at Detroit must pay. For example, under the all-rail differential of 3 cents per 100 pounds, upper peninsula copper at the New York price of 17 cents per pound costs the Detroit consumer that price less such differential or 16.97 cents per pound, as against 17 cents per pound to the New York consumer, whereas, under the rail-and-water differential of 10 cents the same copper at 17 cents per pound costs the Detroit consumer 16.90 cents per pound as against 17 cents to the New York consumer.

It appears that electrolytic copper refined in the east is sold at a fraction less than lake copper refined in the upper peninsula. For example, when lake is 17 cents, New York electrolytic will be 16.87. This price, plus freight from the eastern refineries to Detroit, 16 cents per 100 pounds, makes the Detroit electrolytic price 17.03, or a fraction more to the Detroit purchaser than the lake copper at 17 cents is to the eastern purchaser. It will be noted that in the case of electrolytic copper eastern manufacturers are given the advantage of their location close to the eastern refineries while Detroit manufacturers are denied the advantage which their location close to the upper peninsula should give them in reference to copper originating there.

The products of the mills move on third or fourth class rates, and the rates from the Detroit and the eastern mills, where no factor of water competition is presented, are related approximately as is the mileage therefrom. The complainants assert that because of the rate situation of which they complain their business has been contracted more and more every year to a more limited territory, and that in the eastern markets it is almost impossible for them to compete with eastern producers.

Considerable testimony was received in regard to the rates on copper from Montana and western smelters to Detroit and New York. The differential between the rates to Detroit and to New York from Black Eagle, Anaconda, and Butte, Mont., Tacoma, Seattle, and Everett, Wash., and Grand Forks, British Columbia, is in each case 3½ cents. This differential determines to Detroit purchasers the price of copper originating at these points in the same manner as the differential of 3 cents does in the case of copper originating at upper peninsula points. The rates from these western points to New York

are based on the rate of 50 cents per 100 pounds from Anaconda and Butte, Mont., to New York. The defendants claim that this rate is very low, and allege that it is due to the competition of Arizona and Mexico copper at New York, which enjoys a low combination rail-and-water rate of 50 cents per 100 pounds, via Gulf ports. Consequently it is asserted that Detroit mills have to deal with competitors who secure their raw material by water.

The tariffs filed with the Commission do not show a flat 50-cent rate from Arizona to New York via rail-and-water. There are no joint through rates via either all-rail or rail-and-water, and in the absence thereof the combination on El Paso, Tex., applies. Via rail-and-water the current rates are as follows:

	Cents.
Wilcox, Ariz., to El Paso.....	15
El Paso to New York.....	30
Total.....	45
Benson, Ariz., to El Paso.....	17½
El Paso to New York.....	30
Total.....	47½
Nogales, Ariz., to El Paso.....	36
El Paso to New York.....	30
Total.....	66

The all-rail rate from El Paso to New York is 35 cents, making the current all-rail rates from Arizona points 5 cents higher than the rail-and-water rates.

The 50-cent rate from Butte and Anaconda is divided 70.5 per cent west of Chicago and 29.5 per cent east of Chicago, deducting 25 cents per ton taken by the initial carrier before delivery to the trans-continental line. This makes the division from Chicago to New York 13½ cents. The division received by carriers east of Chicago of the rate on copper from upper peninsula to New York is also 13½ cents. Witnesses for defendants testified that of the rate to Detroit, the division taken by carriers east of Chicago is 10½ cents, both in the case of copper emanating from Montana and that coming from the upper peninsula.

We do not believe that the Montana rate situation has any application to the present case. The lowest all-rail rate on refined copper from Montana points to New York is 50 cents or 14½ cents higher than the rate from the upper peninsula to New York, and it is apparent, we think, that the latter rate is not forced down to its present level by competitive rates from Montana.

It is evident that the complaint is mainly directed against the differential of 3 cents between Detroit and New York in the all-rail

rates on upper peninsula copper. The recognition upon the part of the carriers themselves of a differential of 10 cents in favor of Detroit in the present lake-and-rail rates on refined copper and the existence of a differential of 13½ cents to 10 cents from 1890 to 1899 on the all-rail rates are suggestive of the reasonableness of a higher differential than the one against which this complaint is directed.

In the light of the entire situation as disclosed by the record, we are of the opinion that the defendants in maintaining the differential of 3 cents per 100 pounds between the all-rail rates on refined copper from points in the upper peninsula of Michigan to Detroit, Mich., and New York, N. Y., and points taking the latter rate, subject the complainants and the locality of Detroit to undue and unreasonable prejudice and disadvantage. We further find that the present rate on refined copper from such points to Detroit is unjustly discriminatory as compared with the rate to New York and that for the future the difference between the rates from such points to Detroit and to New York should not be less than 10 cents per 100 pounds.

Considering the facts before us, it is apparent that it is the differential rather than the absolute level of the rate of 33½ cents to Detroit, which is also attacked in this proceeding, to which must be attributed the cause of the handicap against which the Detroit complainants protest. These copper-producing points of the upper peninsula all lie north of the 46th parallel of latitude, in a projection of land into Lake Superior comprised of Houghton and Keweenaw counties. The Mineral Range and the Copper Range are short lines connecting with the Duluth, South Shore & Atlantic and the Chicago, Milwaukee & St. Paul, respectively, at points already indicated. The Mineral Range operates a total mileage of 182.01 miles and is closely affiliated with the Duluth, South Shore & Atlantic. The Copper Range operates a total mileage of 152.93 miles. The Duluth, South Shore & Atlantic Railway extends from Duluth, Minn., through northern Wisconsin and the upper peninsula of Michigan, to Sault Ste. Marie and the straits of Mackinaw.

These three originating carriers operate in a sparsely settled territory. The climatic conditions are extremely unfavorable during the winter months and the general result of operation has fallen below an acceptable rate of return. Copper is a high-priced, valuable commodity, which on the basis of long-established and well-recognized principles of rate making, should bear a rate corresponding to its proper place in a classification of commodities. Both on account of the relative lack of financial prosperity of the initial carriers and the ability of copper to bear the rate, we can not, under the present conditions, find the rate under attack unreasonable in itself. An order in accordance herewith will be issued.

No. 4737.
FRENCH PAPER COMPANY ET AL.
v.
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 554.

Submitted July 23, 1912. Decided December 2, 1912.

Rate of \$1.90 per net ton on bituminous coal from points in West Virginia to Niles, Mich., not shown to have been unreasonable. Complaint dismissed.

A. E. Decker for complainants.

D. P. Connell for Michigan Central Railroad Company and Toledo & Ohio Central Railway Company.

W. N. King for Kanawha & Michigan Railway Company.

W. S. Bronson for Chesapeake & Ohio Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, manufacturers of paper at Niles, Mich., allege in their petition, filed March 4, 1912, that unreasonable rates were charged by defendants for the transportation of bituminous coal in carloads from stations located upon the lines of the defendants, the Kanawha & Michigan Railway Company and the Chesapeake & Ohio Railway Company, in West Virginia, to Niles, Mich., in violation of sections 1 and 4 of the act to regulate commerce. Reparation and the establishment of a reasonable rate for the future are asked.

The complaint is based upon the fact that South Bend, Ind., takes a rate of \$1.80 per net ton on coal from the points of origin, while the rate to Niles is \$1.90, Niles being only 12 miles from South Bend. It is alleged that the rate to Niles is unreasonable to the extent that it exceeds the rate to South Bend and that the greater charge to Niles, an intermediate point, when transported via Toledo, Ohio, and the Michigan Central Railway, is in violation of the fourth section. Complainants further contend that as Niles takes the same class and commodity rates as South Bend from the various points in question, no sufficient reason exists why the rate on coal should not be the same to the two points.

The testimony shows that the distance from the Kanawha coal district in West Virginia, where the shipments originate, to Niles, via

Cincinnati, over the Chesapeake & Ohio and Pennsylvania lines, is 500 miles, and the distance between the same points over the Kanawha & Michigan and Pennsylvania lines, via Columbus, Ohio, and Logansport, Ind., is 484 miles. These routes constitute the short lines between the points of origin and destination via which the rate on coal to Niles is \$1.90 per ton. The distance via Toledo and the Michigan Central is 576 miles. Niles is intermediate to South Bend via the last-named route and takes a higher rate, but South Bend is intermediate to Niles when shipments are made via the short lines.

It is contended by defendants that the rates on coal from the points in question are made with relation to the rates from points in the Pittsburgh coal district and from near-by Indiana mines. The distance from Pittsburgh to Niles is 444 miles, and the rates to Niles and South Bend are the same as from the Kanawha district. The rates yield 3.7 mills per ton per mile on shipments to South Bend from the Kanawha district and 3.8 mills to Niles. The defendants further contend that the \$1.90 rate to Niles via the direct route is no more than the equivalent mile for mile of the \$1.80 rate to South Bend, and therefore, as compared with the South Bend rate, the Niles rate is reasonable. It is pointed out that the rates on coal from near-by Illinois fields are higher to Niles than to South Bend and that competitive elements enter into the making of the coal rates which do not obtain with respect to class and commodity rates generally.

Complainant made no showing that the rate to Niles was unreasonable *per se*, but relied wholly on the fact that as Niles is grouped with South Bend on the classes and most commodities no reason exists for making an exception of coal.

On this record we are unable to find that the rate on coal from the Kanawha district mines to Niles is unreasonable. That the defendants, in connection with other carriers not parties to this proceeding, have grouped Niles and South Bend for rate-making purposes on other traffic is not convincing that they should be required to do so in respect of coal. An order will be entered dismissing the complaint.

Defendant the Kanawha & Michigan Railway Company has filed application No. 554 for relief from the provisions of the fourth section in respect of shipments moving over its line and over the Hocking Valley to Toledo and the Michigan Central to Niles, and agreed at the hearing that this application might be determined upon the evidence presented in this record. This feature of the case is disposed of herewith by separate order.

25 L. O. C.

No. 4709.

WISCONSIN LIME AND CEMENT COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.

Submitted August 5, 1912. Decided December 2, 1912.

Complainant contracted for the delivery at Englewood, Ill., of paving brick to be shipped over defendants' lines from Danville, Ill. At the time of the contract there was a published rate of 65 cents per ton on the traffic in carloads, from Danville to Englewood, and a part of the brick was moved under that rate. By permission of the Commission, upon application by defendants, the rate was increased to 80 cents per ton upon five days' public notice, and the residue of the brick was moved under the increased rate. Damages are claimed in an amount equivalent to the additional charges complainant was required to pay; *Held*, That as no violation of the act to regulate commerce by defendants is shown, no grounds exist for an award of damages. Complaint dismissed.

Charles Woodward for complainant.

D. P. Connell, O. E. Butterfield, and Clyde Brown for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation dealing in building material and paving brick at Chicago, Ill., by petition, filed February 20, 1912, assails as unjust and unreasonable a rate of 80 cents per ton charged by defendants for the interstate transportation of certain carloads of paving brick from Danville, Ill., to Englewood, Ill.

August 25, 1911, complainant contracted to furnish to the Calumet Coal & Teaming Company of Chicago, 1,660,000 paving brick to be delivered at Englewood, a suburb of Chicago. Deliveries were to commence about September 15, 1911, and were to continue at an average of 50,000 brick per day until the contract was performed. At the time the contract was made the Cleveland, Cincinnati, Chicago & St. Louis Railway Company published a rate of 65 cents per ton on brick of all kinds in carloads from Danville to Englewood via Indianapolis, Ind., the route over which the shipments in question moved. Complainant avers that the contract was entered into with the belief and expectancy that the brick would move under the 65-cent rate, of which it had been previously advised, and that the delivery price was fixed accordingly.

By tariffs effective October 14, 1911, upon less than 30 days' notice, under special permission of this Commission, the rate on brick in

carloads from Danville to Englewood was increased to 80 cents per ton and has so remained since.

Complainant shipped about half the brick under its contract prior to October 14, 1911, and was charged 65 cents per ton. On the other half of the brick the advanced rate of 80 cents per ton was charged. It appears that if the usual notice of 30 days had been given the entire amount of brick called for in the contract could have been moved before the increased rate became effective.

Complainant contends that it has been damaged to the extent of 15 cents per ton on all the brick that moved after October 14, 1911, and reparation is demanded on that basis, there being no other question involved. No contention is made that the rate of 80 cents per ton is in itself unreasonable. It was expressly stated at the hearing that the claim for damages rests entirely upon the fact that the rate was increased from 65 to 80 cents per ton upon only a few days notice and without affording an opportunity to complainant to complete deliveries under its contract.

Defendants say that the continuance of the 65-cent rate was due to an error in the publication of their tariff, upon discovery of which application was made to the Commission for its correction upon less than statutory notice in order to prevent demoralization of rates into Chicago on brick from Danville and other points in the same general territory. Application was made to the Commission, and it permitted the increased rate to become effective upon five days' notice. There is no attack upon the lawfulness or regularity of the proceedings or upon the order entered therein.

The Commission is authorized to award damages only when there has been a violation of the act to regulate commerce. No such violation is shown in this case. The change in the rate upon less than 30 days' notice was not only not in violation of the act, but was the result of proceedings plainly authorized thereby and regularly conducted thereunder. Shippers are charged with knowledge of the law as to the manner in which transportation rates may be changed, and are, of course, bound thereby.

We are of opinion and find that complainant has not shown itself entitled to an award of damages against the defendants by reason of any matter set up in the petition. An order will be entered dismissing the complaint.

25 I. C. C.

No. 4277.
LINDSAY BROTHERS
v.
PERE MARQUETTE RAILROAD COMPANY.

Submitted July 30, 1912. Decided December 2, 1912.

Defendant's rate and minimum weight provided for the transportation of sleighs in carloads from Wayne, Mich., to Milwaukee, Wis., not shown to have been unreasonable or unduly discriminatory. Complaint dismissed.

H. F. Lindsay for complainant.

John C. Bills for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION :

Complainants, a copartnership engaged in selling vehicles at Milwaukee, Wis., allege in a petition, filed July 31, 1911, that the rate of 27 cents per 100 pounds for the transportation of sleighs in carloads, from Wayne, Mich., to Milwaukee, and the minimum carload weight of 11,000 pounds for 36-foot cars, with a graduated scale for cars larger, are unreasonable and unduly discriminatory. Reparation and the establishment of a lower rate and lower minima for the future, are asked.

The basis of the complaint against the rate of 27 cents is that it is unreasonable as compared with the proportional rate of 16 cents from Wayne to Milwaukee when the shipments are destined to points in interior Wisconsin. The minima prescribed in the tariffs of the defendant are objected to upon the ground that the nature of the shipments is such that they can not be loaded to the weights prescribed as minima for the various sizes of cars.

The dimensions of the sleigh when crated are 3 feet 7 inches wide, 4 feet 3 inches high, and 5 feet 9 inches long, occupying a space of 87.5 cubic feet. The package weighs 200 pounds, or about one-half the weight of a wheeled vehicle. The dimensions of defendant's 36-foot car are 36 by 8.5 by 8.5 feet, making 2,601 cubic feet. It is stated that about 7,000 pounds can be loaded in a car. A carload of sleighs is worth from \$400 to \$600.

The tariffs prescribe that upon a shipment such as is here involved, from Wayne to Milwaukee, the minimum on a 36-foot car is 11,000 pounds, and upon shipments from Wayne to certain points in interior

Wisconsin the minimum is 14,000 pounds to Milwaukee and 20,000 pounds beyond.

Various light and bulky articles which can not be loaded heavily are given the lowest minimum contained in the particular carriers' tariffs. Defendant asserts that this practice is known as the principle of the least minimum, and applies universally; that the least minimum in official and western classification is 10,000 pounds and in the southern is 8,000 pounds; that the principle is due to the impossibility of adjusting rates and minima with exactness to the many articles of every classification group, such as vehicles, furniture, cans, and boxes.

Complainant gives prominence to the fact that strong market competition exists in what it designates as its sales territory in interior Wisconsin on account of shipments made direct from manufacturing points in central freight association territory and from the products of local factories. Commercial conditions may be considered in connection with other factors that determine the reasonableness of a particular rate, but the adequacy of the revenue for the service performed by the carriers must take precedence over market conditions affecting the commodity transported. The testimony shows that from Wayne to the points mentioned by complainant as taking lower rates than Milwaukee the total charge per car of the size employed for the shipments involved was substantially greater than the charge per car to Milwaukee when based upon the established minima. The rate from Wayne to Milwaukee is 27 cents, minimum 11,000 pounds on 36-foot car and 12,320 pounds on 40-foot car, making the charge per car \$29.70 and \$33.26, respectively. The proportional rate from Wayne to Milwaukee is 16 cents, minimum 14,000 pounds for 36-foot car and 18,200 pounds for 40-foot car, to which is added the local rate from Milwaukee to destination, based upon a minimum of 20,000 pounds for car of either size. Defendant shows that the charges per car from Wayne to the following points are as follows:

Destination.	36-foot car.	40-foot car.
Plymouth, Wis.....	\$34.40	\$41.12
Granville, Wis.....	32.40	39.12
Merton, Wis.....	36.40	43.12
North Lake, Wis.....	36.40	43.12
Sussex, Wis.....	34.40	41.12
Thiensville, Wis.....	32.40	39.12
Schleisingsville, Wis.....	36.40	43.12
Germantown, Wis.....	34.40	41.12
Allentown, Wis.....	38.40	45.12
Barton, Wis.....	38.40	45.12
Brown Deer, Wis.....	32.40	39.12
Cedarburg, Wis.....	38.40	45.12
Cedar Lake, Wis.....	38.40	45.12
Francis Creek, Wis.....	32.40	39.12
Grimms, Wis.....	34.40	41.12
Jackson, Wis.....	35.40	42.12
Rockfield, Wis.....	34.40	41.12

The distance from Wayne to Milwaukee is 328 miles, including the car-ferry service of 100 miles across Lake Michigan. The defendant claims that it pays the Michigan Central Railroad Company \$4.40 per car for originating the traffic, \$7.50 to the car ferry, and approximately \$4.50 to the Chicago, Milwaukee & St. Paul Railway Company for delivery, leaving \$13.30 for the haul from Wayne to Ludington. On the through shipments to points in interior Wisconsin defendant stated that the Chicago, Milwaukee & St. Paul Railway Company made no terminal charge. The factory from which the shipments were made is located on the Michigan Central, which road has a rate of 28½ cents on sleighs from both Wayne and Jackson, Mich., to Milwaukee, having the same minimum as the defendant. Complainant offered some comparisons of carload charges for 50-foot cars from Wayne to Milwaukee with those from Wayne to points in interior Wisconsin that show higher charges to Milwaukee for the shorter haul, but it does not appear that the charges on any of the shipments upon which reparation is asked were higher to Milwaukee than to points beyond.

Upon the record it is our conclusion that the rate and minimum weights as applied to the shipments here involved have not been shown to be unreasonable or unduly discriminatory. However, the fact that the present basis for rates to points beyond Milwaukee in some instances results in lower per-car charges to interior Wisconsin points than applicable on shipments to Milwaukee suggests the necessity for some readjustment by defendant in order to avoid a violation of the fourth section of the act.

An order will be entered dismissing the complaint.

25 I. C. C.

No. 4190.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE
OF MONTANA

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-
PANY ET AL.

Submitted February 23, 1912. Decided December 2, 1912.

Double first-class rating applied to the transportation of two rocking chairs, set up, with rockers detached and tied to back, from Lincoln, Nebr., to Helena, Mont., not found excessive or unreasonable. Complaint dismissed.

J. A. Poore for complainant.

Gunn & Rasch for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant brings this proceeding on behalf of S. C. Ring, a commercial salesman of Helena, Mont. By petition, filed June 21, 1911, it is alleged that excessive and unreasonable charges were collected for the transportation of two rocking chairs from Lincoln, Nebr., to Helena, Mont. Reparation is asked.

The shipment was made December 19, 1910, and charges amounting to \$8.55 were collected, based upon a weight of 190 pounds, and double first-class rate of \$4.50 per 100 pounds, provided by western classification for rocking chairs, set up. The classification contained a provision as follows:

Rocking chairs.—Bases detached, taken apart, and tied to backs, or backs and seats detached, packed flat on bases, first class.

The chairs were shipped set up, with the rockers or runners detached and tied to the back of the chair before burlapping. Complainant contends that the removal of the rockers or runners satisfied the provision "bases detached, taken apart, and tied to back." However, upon the record it is clear that these chairs had no such parts as are commonly known as bases, and no reasonable construction of the above provision will admit of its application in a case where only the rockers or runners are removed.

Upon the record we are unable to find that the charges collected were excessive or unreasonable. The complaint must therefore be dismissed and an order will be entered accordingly.

No. 3702.
PADUCAH COOPERAGE COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted April 25, 1911. Decided November 11, 1912.

Minimum weight of 20,000 pounds applicable to shipments of barrels in carloads from Paducah, Ky., to New Orleans, La., found to have been unduly discriminatory to the extent that it exceeded 12,000 pounds subject to rule 24-C of southern classification. Reparation awarded.

Emerson Bentley for complainant.

Frank W. Gwathmey and *Hunter C. Leake* for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture of cooperage at Paducah, Ky. Its petition, filed December 12, 1910, alleges that owing to the application of an excessive minimum weight, unreasonable, and unduly discriminatory charges were exacted for the transportation of 11 carloads of empty oil barrels which moved during April and May, 1910, from Paducah, Ky., to New Orleans, La. Reparation is asked.

The rate for the transportation of oil barrels in carloads from Paducah to New Orleans was 24 cents per 100 pounds, and the minimum weight 20,000 pounds for 36½-foot cars, subject to rule 24-C of the southern classification, which provides for a graded increase in the minimum on larger cars. The minimum applicable to the same kind of traffic from Memphis, Tenn., to New Orleans was 12,000 pounds, subject to rule 24-C, and the rate 20 cents. The rate from Memphis is now, and since June 5, 1911, has been, 25 cents, with a minimum of 12,000 pounds. The record clearly discloses and defendant admits that it is impossible to load 20,000 pounds of oil barrels into a standard 36-foot car, and that a reasonable minimum weight for this class of traffic would be 12,000 pounds.

Complainant seeks reparation upon the basis of a 12,000-pound minimum and the rate of 24 cents. Under the rate and minimum, applied the revenue per car from Paducah to New Orleans, 550 miles, was \$48. At the same rate with a minimum of 12,000 pounds the

carload revenue would be \$28.80. From Memphis to New Orleans, a distance of 395 miles, the rate of 20 cents with the minimum of 12,000 pounds, made the yield \$24 per car.

During the past in the establishment of carload rates, it has been the practice of carriers in some cases to name a comparatively low rate and an unusually high minimum as a basis for computing carload charges. It appears that in this case the minimum of 20,000 pounds was prescribed arbitrarily, or without regard to the physical capacity of the car, for the purpose of protecting the carrier from an unduly low charge for a carload movement. It will be noted that the rate from Paducah was but 4 cents per 100 pounds higher than from Memphis. To accord complainant the benefit of the 12,000 pound minimum at the 24-cent rate would give it an undue advantage over its Memphis competitors, and result in the very discrimination which it is the purpose of the act to prevent.

Considering all the circumstances, we are of the opinion and find that the charges collected on complainant's shipments were unreasonable and unduly discriminatory to the extent that they exceeded charges based upon a rate of 33 cents per 100 pounds and a minimum weight of 12,000 pounds, subject to rule 24-C of southern classification. Defendant will be required to establish and maintain for the future, for the transportation of empty oil barrels in carloads, from Paducah to New Orleans, a rate not in excess of 33 cents, with a minimum weight not in excess of 12,000 pounds, and not greater than the minimum weight contemporaneously maintained on similar shipments from Memphis to the same point.

We further find that complainant made certain shipments and paid charges thereon on the basis herein found unreasonable, and that it has been damaged to the extent of the difference between the amount which it did pay and the amount it would have paid upon the basis herein found reasonable. Reparation is asked on a number of shipments other than those directly involved in this proceeding, but the record contains no proof thereof. Complainant should submit a statement describing in detail the shipments upon which the charges herein found unreasonable have been applied, and upon verification by the defendant an order will be entered for reparation in such an amount as may be found due. An order will be entered in accordance with the foregoing conclusions.

25 I. C. C.

No. 4202.
NATIONAL REFINING COMPANY
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.

Submitted February 15, 1912. Decided December 2, 1912.

Rate of 27 cents per 100 pounds for the transportation of petroleum and its products in carloads from Coffeyville, Kans., to Joliet, Ill., found to be unreasonable to the extent that it exceeds 22 cents per 100 pounds, which rate is prescribed for the future.

C. D. Chamberlin for complainant.

J. W. Allen, Joseph M. Bryson, and C. S. Burg for Missouri, Kansas & Texas Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in producing, refining, and selling oil, and maintains a refinery at Coffeyville, Kans. In its petition, filed June 24, 1911, it is alleged that the rate of 27 cents per 100 pounds established by the defendants for the transportation of petroleum and its products in carloads from Coffeyville to Joliet, Ill., is unjust and unreasonable. The establishment of a reasonable rate is asked.

From its refinery at Coffeyville the complainant ships petroleum and its products to its plant at Joliet, Ill., a station on the Chicago & Alton Railroad, 37 miles southwest of Chicago, Ill. The rate on petroleum and its products from Coffeyville to Joliet is 27 cents per 100 pounds. The Texas Company, a rival oil concern, has a plant at Lockport, Ill., a station on the Chicago & Alton Railroad directly intermediate to Joliet and Chicago. This company also has a refinery at Tulsa, Okla. From Tulsa to Lockport the rate on crude oil, crude-oil distillates, and gas oil, carloads, is 18 cents. However, the rate on petroleum and its products is 29 cents.

The complainant avers that the establishment of a rate of 27 cents from Coffeyville to Joliet, a distance of 583 miles, as compared with the rate of 18 cents from Tulsa to Lockport, the short-line distance between these points being 672 miles, is unreasonable, and places the complainant at an undue disadvantage in marketing its products. It is the complainant's position that the rate from Coffeyville to

Joliet should not exceed 18 cents per 100 pounds. While it is true that the short-line distance between Tulsa and Lockport is 672 miles, the 18-cent rate is not applicable via the short-line distance but via a circuitous route covering 897 miles, and this rate is participated in by only one of the parties defendant in this proceeding, and does not apply on petroleum and its products, but is limited to the commodities above named. The 18-cent rate is also applicable from Tulsa to Joliet, but owing to the fact that the complainant has no refinery at Tulsa it does not ship from that station.

Both Coffeyville and Joliet are in western classification territory, and in the absence of a commodity rate on petroleum and its products between these points the fifth-class rate, western classification, would apply. It is stated to be the usual custom when establishing rates on fifth-class commodities from points in Kansas to Chicago and Chicago rate points, including Joliet, to apply a differential of 5 cents over the St. Louis rate. The rate on petroleum and its products from Coffeyville to St. Louis, Mo., is 17 cents. The rate of 27 cents complained of is based on the sum of the intermediate rates, 10 cents being the rate applicable from St. Louis to Joliet. As above stated, the distance from Coffeyville to Joliet via the defendants' lines is 588 miles, and a rate of 22 cents per 100 pounds would yield a revenue of 0.755 cent per ton per mile.

Upon consideration of all the facts and circumstances disclosed by the record we are of the opinion and find that the present rate charged by the defendants for the transportation of petroleum and its products is unreasonable to the extent that it exceeds 22 cents per 100 pounds, which rate will be prescribed as the maximum for the future.

An order in accordance with these conclusions will be entered.

No. 4333.

FULLERTON LUMBER & SHINGLE COMPANY, LIMITED,
v.
BELLINGHAM BAY & BRITISH COLUMBIA RAILROAD
COMPANY ET AL.

Submitted February 19, 1912. Decided December 2, 1912.

1. Unjust discrimination, if any, in combination rates charged for the transportation of lumber from points in Washington to points in Canada exists wholly as to the rates for transportation in Canadian territory, over which this Commission has no jurisdiction.
2. Joint rates complained of not found to be unreasonable.

W. G. Fullerton for complainant.

W. H. Somers for Bellingham Bay & British Columbia Railroad Company.

F. G. Dorety for Great Northern Railway Company.

Henry Blakely for Northern Pacific Railway Company.

Bogle, Graves, Merritt & Bogle for Canadian Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation engaged in the lumber business, with its principal office at Vancouver, B. C. In its petition, filed August 19, 1911, it is alleged that the rates established by the defendants for the transportation of lumber in carloads from points in Washington to points in Canada are unjust, unreasonable, and unduly discriminatory to the extent that they exceed rates to farther distant points. Reparation and the establishment of reasonable rates are asked.

During the period from June 30, 1910, to June 13, 1911, the complainant shipped various carloads of lumber from Bellingham, Lynden, Clear Lake, Everett, Monahan, and Big Lake, Wash., to the following points in Canada: North Battleford, Killam, Stettler, and Castor, in the Province of Alberta; Radisson, Kindersley, Leross, Osler, Wadena, Forward, Langbank, Lanigan, Viscount, Bethune, Kamsack, Lumsden, Zealandia, Watrous, Muenster, and Netherhill, in the Province of Saskatchewan. The shipments in question originated on the Northern Pacific Railway and Bellingham Bay &

British Columbia Railroad and moved via these lines to Sumas, Wash., a station situated on the international boundary line between the United States and Canada, thence to destinations via the Canadian Pacific Railway and Canadian Northern Railway. At the time of movements the joint through rate on lumber in carloads via the defendants' lines from all points of origin in question was, to Stettler and Castor 45 cents, Killam 47 cents, and Forward 42 cents, per 100 pounds; which were the rates charged on the movements to these points with the exception of the shipment to Castor, which was charged at the rate of 48 cents per 100 pounds. This shipment moved from Big Lake to Castor on January 3, 1911, and weighed 59,400 pounds, freight charges thereon being collected in the sum of \$288.12, including a diversion charge of \$3. There is, therefore, an apparent overcharge of \$17.82 on this shipment. The bill of lading is not of record, and the facts relative to the service for which the \$3 diversion charge was made are not fully disclosed.

There were no joint rates to points of destination of complainant's shipments other than those stated above, and through rates were made up of the local rates established by the Northern Pacific Railway and Bellingham Bay & British Columbia Railroad Company to Sumas, which, as above stated, is on the Canadian border, plus the rate charged by the Canadian Pacific and Canadian Northern Railway companies thence to destinations. Rates to Sumas in force at time of shipments were as follows:

From—	Rate per 100 pounds.	Distance.
	Cents.	Miles.
Bellingham, Wash.....	3½	23
Lynden, Wash.....	3	12
Clear Lake, Wash.....	4	43
Everett, Wash.....	7	96
Monahan, Wash.....	7½	116
Big Lake, Wash.....	4½	49

The initial lines also receive the above rates as their proportion where joint through rates to points in Canada are established. From Sumas to the points of destination in question the movement is wholly in Canada, for which there are no rates on file with the Commission.

With a few exceptions the shipments in controversy were originally billed to Regina, Sask., Calgary, Alta., or Moosejaw, Sask., and were subsequently diverted to destination points in question. On the dates of the movements the joint through rate from points of origin to Regina, Calgary, and Moosejaw was 40 cents per 100 pounds, and the complainant maintains that the charges collected on the shipments in controversy, also the rates charged to various

other stations in Canada, which in each instance exceeded this rate, were unreasonable, Regina, Calgary, and Moosejaw being farther distant from points of origin. Defendants aver that the 40-cent rate established to the points above referred to is due to competition and the heavy volume of traffic moving to these stations, and that the rates to the other points in question are just and reasonable for the service rendered.

Upon the record we do not find the joint rates in question are unjust or unreasonable, nor do we find that the portions of the combination rates established by the American carriers are unjust or unreasonable. If the discrimination complained of exists it is due to rates applicable only in Canadian territory, over which rates this Commission has no jurisdiction. It follows, therefore, that the complaint must be dismissed.

25 I. C. C.

No. 4585.

SOUTHERN FURNITURE MANUFACTURERS ASSO-
CIATION

v.

SOUTHERN RAILWAY COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 1548.

Submitted October 24, 1912. Decided December 2, 1912.

1. Rates on bedroom furniture and chairs from points in Carolina territory to Pacific coast points, north Pacific coast terminals, and points taking the same rates, found to be unjustly discriminatory as compared with rates upon the same commodities to the same destinations from Virginia cities and points in eastern and New England territories.
2. The fourth-section application herein, seeking authority to continue lower rates on furniture and chairs from Basic City, Galax, Burkeville, and other points in Virginia to Pacific coast terminals and Pacific slope points, other than are concurrently maintained upon the same commodities from Carolina territory to the same destinations, is denied.
3. Reparation disallowed.

McNeill & McNeill and *Justice & Broadhurst* for complainant.

R. Walton Moore and *Frank W. Gwathmey* for Southern Railway Company, Norfolk & Western Railway Company, Alabama Great Southern Railroad Company, Illinois Central Railroad Company, Atlanta & West Point Railroad Company, and Western Railway of Alabama.

H. A. Scandrett for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, and Southern Pacific Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This case came on to be heard as the result of a petition, filed December 6, 1911, by the Southern Furniture Manufacturers Association, a voluntary association, with main office at High Point, N. C., composed of firms and corporations engaged in the manufacture and sale of furniture, including wooden bedsteads, folding beds, bureaus, chiffoniers, small tables, washstands, and chairs. The attack is upon defendants' rates of \$1.70 per 100 pounds on bedroom furniture, in straight or mixed carloads, minimum weight 20,000 pounds, and

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\$1.75 per 100 pounds on chairs, straight or mixed carloads, minimum 20,000 pounds, from points in so-called Carolina territory to Pacific coast points, north Pacific coast terminals, and points taking the same rates.

From Virginia cities and from Basic City, Burkeville, and Galax, Va., as well as from points in the District of Columbia, Maryland, Pennsylvania, New York, and New England, the rate on both bedroom furniture and chairs to the same destinations is \$1.50 per 100 pounds, minimum 20,000 pounds, and this same rate obtains in territory as far west as Colorado, Montana, and Wyoming, including Wisconsin and Michigan points where there are large and important furniture factories. It is contended that the Carolina rates are of themselves unreasonably high, that they bestow upon the manufacturers in and traffic from the territory north of the petitioner undue preference and advantage, and subject petitioner to unjust discrimination.

Furniture moves under a wide range of descriptions, rates, and minimum weights, but there are here in issue only those mixtures and rates embraced within the descriptions above mentioned.

Since the hearing of this case the carriers have published advanced rates as follows: From Carolina territory to Pacific coast points and north Pacific coast terminals, bedroom furniture \$2 per 100 pounds, chairs \$2.07 per 100 pounds; from eastern and Virginia cities to Pacific coast points, bedroom furniture \$1.87 per 100 pounds, chairs \$1.90; to north Pacific coast terminals, bedroom furniture \$1.65, chairs \$1.75. These rates have all been suspended by the Commission until December 31, 1912, and hearings with respect thereto are in progress.

It is noteworthy that under existing rates both bedroom furniture and chairs transported in cars under 40 feet in length and subject to a minimum of 14,000 pounds, take the same rate from Carolina territory as from the other territories named, i. e., \$1.85 per 100 pounds.

Announcement is made in the petition of intention to file an amendment seeking reparation on shipments moving subsequently to December 15, 1909, but no specific sum is asked nor have details of such shipments been submitted.

The petition also charges violation of the fourth section of the act, and in connection with the complaint hearing was had of that portion of Fourth Section Application No. 1548 of the Southern Railway Company and its connections which seeks authority to continue lower rates on furniture, including wooden bedsteads, folding beds, bureaus, chiffoniers, small tables, washstands, and chairs from Basic City, Galax, Burkeville, and other points in the state of Virginia to Pacific coast terminals and Pacific slope points than are concurrently maintained upon the same commodities from Carolina territory to the

same points of destination. This application is one of many general or blanket applications filed by the carriers and in form and substance meets the requirements of the Commission's fourth-section order of October 14, 1910, in pursuance of which it was filed. Petitioner questions its legality and sufficiency, pointing to the language of the act, i. e.:

That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers and property;

and contending that this is not such an application as is contemplated by the statute. It should be noted, however, that there is nothing in this section of the act prescribing the form, contents, or breadth of the application to be filed thereunder. We therefore hold that this application is sufficient for the purposes for which it was filed. The issues raised therein are so allied with those presented in the main case that the two will be considered together.

Briefly stated, the defense rests upon the propositions that the rate from Virginia and other eastern territory named is abnormally low, due to water and other competitive influences; that the initial carrier, the Southern Railway, does not make nor control the rate from any of the points north; that this carrier is not the short line from any of said points; and that investigation fails to disclose a single shipment of these commodities from any of the Virginia or other eastern manufacturing points to the Pacific coast via the line of the Southern Railway through Carolina territory, thence over its western routes. Further, that the conditions obtaining in the Carolina territory are totally dissimilar from those surrounding traffic from Virginia points and points north thereof; that the evidence does not disclose any substantial competition with the petitioner from any territory from which the Southern Railway makes or controls the rate, and that under the present adjustment the Carolina factories have enjoyed great prosperity and have attained enviable commercial supremacy. Finally, that the rate is not only reasonable, but low, considering the character of the service rendered by the carriers, earnings derived from similar services, light loads, distances hauled, etc. It should here be said that although some of the other carriers were represented by counsel, no testimony was offered for the defense except by a witness for the Southern Railway, whose testimony had to do principally with the interests of that line.

The term "Carolina territory" as here employed embraces the territory lying south of the main line of the Norfolk & Western Railway Company between Bristol, Va., and Norfolk, Va., the furniture-producing points being scattered over a wide area in Virginia and North Carolina, of which High Point may be said to be the

center, not only geographically but in point of variety and volume of production. What is said of High Point may therefore be considered typical of the entire territory.

Galax, Va., is a local station on a branch of the Norfolk & Western Railway running south from Radford. Basic City is on the Chesapeake & Ohio main line, between Richmond and Cincinnati, and also on the line of the Norfolk & Western between Roanoke and Shenandoah Junction. Burkeville, Va., is served by the Norfolk & Western, and is also on the Southern Railway line between Danville and West Point, Va. The Carolina factory points are all situated on the various lines of the Southern, some being served as well by other carriers, such as the Atlantic Coast Line Railroad and Seaboard Air Line Railway, but none of these other carriers are here defendant.

The Southern Railway is a party to Countiss' tariff, I. C. C., No. 929, naming the rate of \$1.50 from Virginia, eastern, and New England points. This tariff does not prescribe specific routing east of the Mississippi River, but is available for traffic moving south through Potomac Yard, Va., thence over the Southern Railway main lines through Greensboro, High Point, Salisbury, and Asheville, N. C., or south from Salisbury through Charlotte, N. C., and Atlanta, Ga. These routes, however, as disclosed by the evidence, are seldom, if ever, used, the traffic from Virginia points taking the lines of the Norfolk & Western or Chesapeake & Ohio through Ohio River crossings, and that from eastern and New England territories moving over the trunk lines through Ohio River crossings, St. Louis, Mo., or Chicago, Ill.

Rates from Galax and Basic City are not named in this tariff, and with the possible exception of its St. Louis-Louisville line the Southern Railway is not a party to the rates from these points. The short line from Burkeville is via the Norfolk & Western, that line fixing the rate. Products of the Carolina factories are forwarded over the Southern's main line through Atlanta and Birmingham or New Orleans, or over the Asheville division through Knoxville and Memphis or Ohio River crossings.

The rates from Carolina territory of \$1.70 on furniture and \$1.75 on chairs are constructed by adding to the Virginia cities' rate of \$1.50 proportional rates of 20 and 25 cents, respectively, the traffic moving, however, via the direct routes previously mentioned and not through the Virginia cities, on which the rates make. And it may be said in passing that the record is silent on the subject of the reason or justification for a rate on chairs from the Carolina factories higher than that on bedroom furniture, no such difference existing in the rates from the territories north.

The present relative adjustment has been continuously in effect for many years, except for a short period in 1902, when the furniture

from Carolina territory took a rate of \$1.45, and the Virginia cities' rate was \$1.25.

In explanation of the application of what may be termed the blanket rate throughout the territory north, east, and west while denying the same rate to the industries adjacent to or immediately south of Virginia cities, it is stated that the basis of \$1.50 was gradually extended by the trunk lines from the western producing points to Indiana and Ohio, and then to the east and New England. The east and west lines serving Virginia cities and competing in trunk line territory found it necessary to meet this situation and established the same rate, and the Southern Railway, for the protection of points intermediate to the Virginia cities, applied the rate as a maximum at such points. But it is contended that here the influence of the trunk lines rates stopped, and the Carolina carriers, pursuing the usual method, established through rates made by adding to the Virginia cities basis certain proportional rates lower than the local rates from the producing points to Virginia cities and lower than certain intra-state rates for like distances. It is of little consequence as to this proceeding whether the proportional rates here used are of themselves reasonable, and we shall not discuss the basing-point system of rate making further than to state that the plan here followed is not peculiar to this situation. Much is made of comparisons of divisions received by the carriers east of the Mississippi River with those accruing to the lines west, but we can see little in these comparisons to aid in a solution of the problem now before us and will not here analyze them.

Petitioner does not deny that the furniture industry in Carolina territory has developed rapidly in recent years; that it is now third in importance in the state of North Carolina, and that High Point, with 15 to 20 factories, now leads Grand Rapids, Mich., one of the most important furniture manufacturing points in the country. The preponderance of evidence, however, is to the effect that there has been no increase in production for two or three years, that the Pacific coast trade is going in continually increasing volume to other factories, necessitating the marketing of Carolina products largely in the south, where the supply far exceeds the demand, and that although these factories sell successfully in the east and elsewhere in competition with factories located there, they are being deprived of an important and valuable trade by the present adjustment to the Pacific coast.

Petitioner's members sell almost invariably f. o. b. factory, consignee paying the freight, and it is significant as bearing upon the allegation of unreasonableness that petitioner only asks that it be given the same rates as its competitors.

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Furniture in carload lots is loaded by shippers and ordinarily goes through to the coast without transfer or further handling, save in unloading at destination. It is true that it is bulky and of fragile construction, but we find in the record nothing to indicate any unusual risk of loss or damage.

The approximate distances, in miles, using San Francisco as a representative destination, are:

From—	To San Francisco via—			
	New Orleans.	St. Louis.	Memphis.	Chicago.
Boston, Mass.....	4,085	3,751	3,800	3,284
New York, N. Y.....	3,821	3,582	3,595	3,186
Norfolk, Va.....	3,586	3,134	3,399	3,223
Richmond, Va.....	3,520	3,449	3,342	3,143
Lynchburg, Va.....	3,421	3,379	3,195	3,083
High Point, N. C.....	3,316	3,394	3,162	3,114

It is obvious, however, that distance alone is not controlling as to these rates, and if it is of any value to weigh High Point's considerable advantage over Boston or New York in the matter of distance, it must also be remembered that points approximately 1,800 miles from San Francisco have a rate of \$1.50, and High Point, approximately 1,500 miles farther, is contending for the same figure. The rate of \$1.70 from High Point to San Francisco, 3,300 miles, yields 1.1 cents per ton per mile. From Detroit, Mich., to San Francisco, a distance of 2,549 miles, the rate of \$1.50 yields 1.17 cents per ton per mile. From Chicago, a distance of 2,277 miles, the rate of \$1.50 yield 1.32 cents per-ton-per-mile, and, by way of comparison, the rate from High Point to Dallas, Tex., is \$1.03, the distance 1,066 miles, and the per-ton-per-mile revenue 1.8 cents.

In volume and value of production cotton products and tobacco, in the order named, outrank the furniture industry in North Carolina. Cotton piece goods in carloads are transported from High Point to San Francisco at a rate of \$1.28, or 18 cents higher than the rate from Virginia cities. The rate on tobacco in carloads is the same from North Carolina points as from Virginia cities, namely, on manufactured tobacco, \$1.50 per 100 pounds; plug tobacco, in packages of 60 pounds or more each, \$2.20 per 100 pounds. An official of the Southern Railway, in a letter filed of record, states:

Mr. Browder's statement that the adoption of the Virginia cities basis of rates on furniture would be a precedent that we might have to follow with respect to other commodities is thoroughly correct, nor is its correctness affected in any degree by the tobacco adjustment.

The existing rates on cotton piece goods, knitting-factory products, and on numerous finished articles of cotton manufacture, and in fact on nearly everything that is produced in southeastern and Carolina territories, and goes to

the Pacific coast, are higher than are the rates from the eastern seaboard, or so-called trunk line territory.

The notable exception is with reference to tobacco, which exception is easily understood when the measure of the rate is considered, and likewise the fact that tobacco-manufacturing enterprises are located, or have been located, at such points as Richmond, Lynchburg, Petersburg, South Boston, and Martinsville, Va., all in trunk line territory, and at Winston-Salem and Durham, N. C., termini of the Norfolk & Western Railway.

As to this, however, furniture factories are also located at some of the Virginia cities and points named, as well as at Winston-Salem and Durham, N. C., and the following comparison of values and revenues per minimum car furnishes a fair idea of the relative measure of the rate:

Commodity.	Minimum carload.	Rate per 100 pounds.	Revenue per car.	Value per car.
	<i>Pounds.</i>			
Bedroom furniture and chairs.....	20,000	\$1.70	\$340	\$1,200-\$1,400
Tobacco:				
Unmanufactured.....	20,000	1.50	300	-----
Pkg.....	(¹)	2.20	440	-----
Cotton piece goods.....	20,000	1.28	384	7,500
Cotton toweling.....	20,000	1.28	414	-----

¹ Any quantity.

² Figured on 20,000 pounds.

It is not established by this record that there is any actual movement of furniture by water from eastern territory to the Pacific coast, or for any considerable part of the distance, and the nature of the commodity would suggest that the contrary is true. Nevertheless the influence of water competition upon the general level of trunk line transcontinental rates must be conceded, and it is well known to the Commission that the effect of the trunk line rates is felt at Virginia cities. These defendants have met at Virginia cities and points intermediate the rates of the trunk lines, but seriously assert that in Carolina territory there is no such competition as that which is met by the Virginia factories, hence fix at Virginia cities the final limit of application of the lower rate. It fairly appears that the rate from trunk line territory on furniture is not maintained by water competition.

It is established out of the mouths of several witnesses that the six Virginia factories within the favored rate zone, most of them of comparatively recent construction, have from the start sought for and, to some extent at least, secured Pacific coast business; that competition from Michigan and Wisconsin is now inconsiderable, owing to the latter turning out goods of higher grade than those produced by petitioner; and that the keenest competition is encountered in the east and north. It is also in evidence that over certain portions of the Southern Railway lines which traverse the furniture territory of North Carolina the density of traffic is greater than on any other

portions of that system, and that as to furniture at least nowhere in the south is traffic more dense than there.

Granting that there must be a line drawn somewhere to mark the limits of application of blanket rates, and that it does not follow that because industries in certain territories are given stated rates, carriers must perforce extend the same rates to all factories of the same kind wherever located, nevertheless that boundary line may not be so artificially established as to subject shippers immediately outside the favored zone to unjust discrimination, and we hold it indefensible that such shippers should be denied as favorable rates to coveted markets as are accorded throughout a considerable portion of the country to competitors producing the same class of goods, selling in the same manner, and no more advantageously located geographically or commercially.

The Southern Railway may, as has been testified, have but little direct voice in fixing the rates from Virginia cities or from points north and east thereof, but the complaint here is against all carriers parties to the rates from Carolina territory to the coast and against some of the carriers serving the Virginia cities and making rates therefrom, and defendants herein, having their lines west of the Mississippi River, participate in the rates from Virginia cities and eastern and New England points as well as from Carolina territory, and are jointly responsible with the initial carriers for such rates.

Largely as the result of a policy in rate making these defendants are penalizing the Carolina-Pacific coast trade approximately \$40 per car, thus restricting petitioner's zone of trade, and we are unable to find upon the record that the continuance of existing unequal conditions is warranted by dissimilarity of competition or other circumstances. Our conclusion is, and we so find, that it is unfair for transcontinental carriers, parties to joint through tariffs and rates, to impose upon Carolina territory the burden of higher rates than those contemporaneously participated in and charged by such carriers from Virginia cities and other points in Virginia and from points in eastern and New England territories, and that the present adjustment unjustly discriminates against their traffic, in violation of section 3 of the act.

Defendants will be required to establish and maintain to Pacific coast points, north Pacific coast terminals, and points taking the same rates, rates on bedroom furniture and chairs within the descriptions here involved, from points in Carolina territory, as that term is here employed, which shall not exceed rates contemporaneously maintained on the same commodities from Virginia cities and other points in Virginia and from points in eastern and New England territories.

Having found the present adjustment unjustly discriminatory, it follows that defendants are not entitled to the relief sought under the

provisions of the fourth section of the act, the granting of which would have the effect of continuing such unjust discrimination.

The testimony clearly establishing the fact that petitioners sell f. o. b. factory, consignees paying the freight, and it not being of record that the adjustment complained of has resulted in damage to the petitioners, it is apparent that no reparation should be awarded under these findings.

An order will be entered in Docket No. 4585 in accordance with the findings herein announced, and an appropriate order will be made as to the fourth section application.

PROUTY, *Chairman*, concurring:

In *Enterprise Manufacturing Co. v. Georgia R. R. Co.*, 12 I. C. C., 130, we held that rates on cotton piece goods from New England mills to Pacific coast terminals might properly be less than from southern mills, and in *China & Japan Trading Co. v. Ga. R. R. Co.*, 12 I. C. C., 236, we again said that rates from New England to the Orient, through Pacific coast ports, might be less than from points in Georgia and South Carolina. Both these cases went upon the ground that water competition fixed the rate from New England, and that the cost of this service was less from that section of the country than from the south Atlantic coast. These cases, I think, were correctly decided, and, if so, it must follow that rates generally under present conditions may be less from New York and points controlled by water competition than from the south.

In the present instance the record shows that water competition is not involved. While I suspect that furniture does move by water, still all parties to this proceeding apparently concede the contrary and this must of course be assumed by us as correct. Unless the rate from New England and north Atlantic seaboard territory is influenced by water competition, I know of no reason why the rate should be less from that section than from the portion of the south involved in the proceeding before us. I therefore concur in the present result, upon the ground that water competition is not involved.

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No. 4816.
EDWARD G. MURRAY LIGHTERAGE & TRANSPORTA-
TION COMPANY

v.

DELAWARE & HUDSON COMPANY.

Submitted November 28, 1912. Decided December 3, 1912.

Upon the facts shown of record the defendant is required to cease and desist from withholding from the complainant through routes and joint rates on its northbound interstate traffic so long as the defendant contemporaneously maintains through routes and joint rates on similar traffic with competitors of the complainant similarly situated.

Nelson L. Keach for complainant.

Lewis E. Carr, jr., and H. B. Weatherwax for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

We are asked here to require the defendant to join with the complainant in establishing through routes and joint through rates on interstate traffic between points in the harbor of New York City and points on the rails of the defendant in the states of New York and Vermont.

One objection urged by the defendant to the relief prayed is that the complaining company was organized under the general incorporation act of the state of New York and not under the statutes of that state providing for the incorporation of common carriers. The defendant contends in fact that the complainant is not a common carrier. In support of that view it offered in evidence a certified copy of its certificate of incorporation issued by the state authorities. In this document it appears that the complainant was organized "to carry on the business of lighterage, forwarding, and transporting any and all kinds of goods, wares, and merchandise," and with that end in view it would "own, build, charter, and operate steam tugs, canal boats, barges, and water craft of whatsoever kind." Then follows the definite statement that "such operations are to be solely for the company's business purposes," and that "this corporation does not propose to act as a common carrier." On the basis of this affirmative declaration by the complainant in its charter papers, the defendant asserts that it is not a common carrier and therefore is not entitled to the relief prayed.

Whether under the decisions of the courts of New York the complaining company, in view of the terms of its charter, may lawfully offer its services within that state as a common carrier and whether the local authorities might successfully question its right as a common carrier to engage in interstate transportation, are questions that we are not called upon to deal with. It definitely appears that the complainant has no direct or indirect industrial affiliations; that it does offer its services to the general public for hire as a common carrier, and as such is actually engaged in transporting both state and interstate traffic. That fact we regard as a sufficient basis to give us jurisdiction of the issue made on the pleadings. Under the broad terms of section one of the act to regulate commerce we do not understand that we may deny the relief sought, if otherwise it may properly be granted, on the ground that the complainant's operations as a common carrier of interstate traffic are in excess of the powers granted to it under the terms of a certificate of incorporation issued by the state.

Another objection urged by the defendant is that the complaining company has published no tariffs with this Commission and has filed no annual reports, or has otherwise taken the steps required of common carriers engaged in the interstate transportation of persons or property. All this is frankly admitted by the complainant. The explanation made is that it has not complied with the act in these particulars because, as it says, it is not yet engaged in any interstate transportation of persons or property that is subject to the act. It asserts that the defendant has refused to establish through routes and joint rates with it, and has thus denied it an opportunity to participate in interstate traffic that is subject to the act. The defendant receives the cargo at its Green Island docks and issues to the complainant a bill of lading. It contends that the complainant is therefore a mere shipper over its rails from that point to Ausable Forks, N. Y. The conditions under which the traffic is conducted were not shown of record in great detail, but it definitely appears that shipments of the general public move from New York Harbor to interstate points on the defendant's rails and that the complainant understands that if it moves between such points on through billing and on rates that are lawfully applicable to the through movement it will be traffic that is subject to the act to regulate commerce; and that, as a common carrier of such traffic, it will be under the obligation to publish rates and otherwise comply with the law. The question then is whether an order shall be entered in accordance with the prayer of the petition requiring the defendant to join with the complainant in establishing such through routes and joint rates.

The contention of the complainant turns largely on the fact that the defendant has admitted other boat lines to participation in the

through movement of traffic between the same points by voluntarily joining with them in the publication of joint through rates, and the allegation of the petition is that it unjustly discriminates against the complainant by refusing to establish joint through rates with it, thus denying the complainant the opportunity of competing for the traffic on even terms with other similar boat lines.

As heretofore stated, a joint through rate applies on traffic delivered to the defendant at Green Island, N. Y., by its competitors, but the complainant, or rather the traffic that it delivers there to the defendant, must pay a higher rate from that point to destination. On sulphur in bulk moving to Ausable Forks, which forms a large part of the traffic moved by the complainant, the defendant assesses a rate of 10 cents per 100 pounds, referred to on the briefs as a proportional rate. It is not, however, a proportional rate, but a transshipment rate, and is applicable only on traffic delivered to the defendant at Troy, N. Y., by water lines with which it has no through rates. Instead of the 10-cent rate from Green Island, the defendant, out of the joint through rate, receives a division of 8.4 cents when the sulphur moves to Ausable Forks in connection with competing boat lines. This differential against its traffic of 1.6 cents per 100 pounds the complainant must absorb. In other words, while its competitors earn 7.6 cents per 100 pounds for moving the traffic from New York Harbor points to Green Island, the complainant, under the same through charge of 16 cents, earns but 6 cents per 100 pounds. This is alleged to be an unjust discrimination, from which it should be relieved by an appropriate order. On traffic to other points on its rails the defendant receives a division of 6.6 cents per 100 pounds when the traffic moves in connection with the complainant's competitors, whereas the defendant assesses its transshipment rate of only 6 cents on traffic moved by complainant.

There is little else of record that tends to throw further light on the controversy. The complainant owns 1 tug boat and 15 barges or canal boats. These are held until needed for service at a public city dock in New York City, near which the complainant maintains an office. While it can receive freight at that point, shippers ordinarily give notice at its office of freight ready for delivery elsewhere. A barge is then sent to the point designated by the shipper, and there the merchandise is received. In due time the barges having cargoes are towed up the river with the complainant's tugboat and are unloaded at landings designated by the shippers. Commodities destined to points on the rails of the defendant are delivered to it at its Green Island docks. The defendant does the unloading and makes a charge therefor of 1 cent per 100 pounds.

While this is a more or less primitive method of serving the shipping public, nevertheless a substantial volume of traffic moves in that way, and in the public interest such use of our public waters is to be encouraged rather than discouraged. Moreover, this is precisely the manner in which the chief competitor of the complainant engages in interstate traffic under joint through rates which the defendant has established with it. So far as is disclosed by the record the northbound traffic of the complainant is larger in volume and its northbound service equally if not more efficient than the northbound service of its chief competitor. Its chief competitor enjoys an advantage, however, with respect to southbound traffic coming off the rails of the defendant in that it has a dock and office of its own a few miles from the Green Island docks of the defendant. The defendant is thus able promptly to notify it of southbound traffic ready for delivery to it. If the shipment is small, wagons are sent for it; if more extensive a barge may promptly be tied up at the defendant's dock to receive it. The complainant has no such facilities for the southbound movement, and that is one of the objections made by the defendant to establishing joint through rates with it. Unless provided with such facilities the defendant must hold the traffic on its docks until the complainant comes for it.

There is force, of course, in that objection so far as southbound traffic is concerned. We see no reason, however, why, with respect to northbound traffic, the defendant should refuse to make such arrangements with the complainant as it has made with competitors of the complainant. Whether the complainant is wise in seeking the establishment of published joint through rates with the defendant is a question which it must decide for itself. Basing our action upon the element of unjust discrimination, which we find from the record clearly exists, we hold that the defendant may not lawfully withhold through routes and joint rates from the complainant on northbound traffic so long as it maintains such relations with its competitors similarly situated and operating in substantially the same manner. It should be added that the defendant at the hearing indicated its willingness to establish through routes and joint through rates with the complainant whenever it had provided itself with the same facilities for taking care of the traffic that its competitors have. We find from the record that the complainant is already as fully equipped as its competitors for handling sulphur, resin, sand, and similar northbound traffic with efficiency and dispatch.

An order will be entered in conformity herewith.

INVESTIGATION AND SUSPENSION DOCKET No. 144.
THE DETROIT RECONSIGNING CASE.

Submitted December 6, 1912. Decided December 11, 1912.

Upon the facts shown of record, the proposed charge of \$2, for reconsigning carload shipments received at Detroit to points within the switching district, found to be unreasonable unless the consignees are advised of the arrival of the cars at Toledo on the tracks of the carriers making delivery at Detroit, so that the consignees may have an opportunity to give their reconsigning orders before the cars reach the latter point.

Howard Streeter for protestants.

D. P. Connell for New York Central lines.

L. C. Stanley for Grand Trunk Railway, Detroit & Toledo Shore Line Railroad Company, and Detroit, Grand Haven & Milwaukee Railway Company.

H. C. Bell for Detroit, Toledo & Ironton Railway Company.

C. M. Booth for Pere Marquette Railroad Company.

N. S. Brown, H. E. Watts, A. H. Helm, and J. S. Sullivan for Wabash Railroad Company and receivers thereof.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

For many years it was the practice of the lines serving the city of Detroit to permit amendments in carload billing so as to show a new destination beyond Detroit or a new delivery point within the switching limits of the city, and to perform the service without additional charge. In the progress of time the privilege was availed of by shippers to such an extent as to embarrass the operation of the Detroit terminals, and in 1910 the carriers sought partially to correct the abuse by filing a tariff setting up a charge of \$3 on each car reconsigned at Detroit to a point beyond. This new charge resulted in a formal complaint which was disposed of in *Detroit Traffic Asso. v. L. S. & M. S. Ry. Co.*, 21 I. C. C., 257, where the principle of making a charge was approved; but we fixed it at \$2 a car, finding that \$3 was an excessive demand for the additional service.

As the record in that proceeding, by agreement of the parties, was made a part of the record now before us, our report there may be referred to for a detailed description of the general conditions affecting the physical handling of traffic at Detroit, thus relieving us of the necessity of restating the facts here.

Although they then adopted the policy of making a charge on cars reconsigned to points beyond the city, the carriers adhered to their former policy, of maintaining a free reconsigning privilege with respect to traffic destined to delivery points within the switching limits of Detroit, until July 13, 1912, when tariffs were filed imposing a charge of \$2 for any such change in the original billing except when the reconsigning order was received by the carriers prior to the arrival of the car at Toledo or at certain other designated points short of Detroit. Upon the protest, more particularly, of consumers and dealers in coal these tariffs were suspended for the purpose of giving the Commission an opportunity to investigate the reasonableness and propriety of the proposed charge.

The congestion on the Detroit terminals was marked during the winter of 1911-12, and there is every reason to believe that unless measures are taken to overcome the difficulties heretofore encountered it may recur during the coming winter and have a more or less adverse effect upon the interests of the general shipping public. The protestants assert that the terminal conditions at Detroit have very little to do with the congestion that has occurred. We think the record, however, makes it fairly clear that this contention is not well founded. On behalf of the Lake Shore & Michigan Southern it is said that 99 per cent of the cars received by it at Detroit are reconsigned. In January of this year, out of 1,381 cars received 1,312 are said to have been reconsigned, and of these 1,158 contained coal. During that period 11 cars of coke came into the city over its lines and all were reconsigned. In February, out of 1,540 cars received on its terminals 1,445 were reconsigned. In March, 1,618 cars out of 1,625 were reconsigned. While the proportion of cars received by the Michigan Central and reconsigned during the same months was smaller than in the case of the Lake Shore, it was still very large. In the classification yard of the Michigan Central there are 18 tracks, of which from three to seven of the longest are regularly devoted to "hold" and "reconsign" cars. To a greater or less degree the same situation prevails with the other carriers. The Michigan Central has recently constructed a new yard outside the city limits for the express purpose of overcoming these difficulties in connection with its own fuel supply. It can not be doubted, therefore, that so great a volume of tonnage reconsigned contributes directly and in large measure to the unsatisfactory conditions referred to upon the record before us and upon the record in the case cited. Perhaps the most serious feature in the situation is that Toledo is the only gateway to Detroit for the coal traffic, and not only is a congestion at Detroit reflected back to Toledo, but any overburden of the terminal facilities of the carriers at Toledo is immediately felt at Detroit.

It is said that comparatively few of the industries at Detroit have sufficient coal storage facilities. Whether this is the result or, on the other hand, the cause of the existence of an extensive coal brokerage business at that point does not clearly appear. It does appear, however, that these industries now rely to a large extent upon coal brokers for their coal supplies, and it was said on the argument that brokerage in coal is more extensively practiced in Detroit than in any other large industrial center. By having coal consigned to themselves constantly in transit the brokers, taking advantage of the reconsigning privilege, are able to meet an immediate shortage at one industry by delaying delivery to another industry sufficiently supplied for the moment to meet its present wants. The volume of coal shipped from the mines directly to industries on their own orders is comparatively small. In other words, the special conditions existing at Detroit force the industries to order their coal through brokers, and the reconsigning privilege enables the brokers to conduct a business in coal that otherwise would not be so extensive.

The value of the reconsigning privilege to the brokers is conceded. The basis of their protest is that their business has been adjusted to the long-continued policy of the carriers of offering the service without charge. It is also said that their margin of profit in the business as now conducted is small. Moreover, it is asserted that the proposed charge is unreasonable and discriminatory.

After what has been said in our report in the case cited it will not be necessary again to state the reasons underlying our finding there that the privilege of reconsigning is one that imposes additional labor, cost, and liability upon the carriers, and therefore is a service for which they may make a reasonable charge either in the rate itself or in the form of a special terminal charge. We justified such a charge with respect to carload shipments reconsigned at Detroit for points beyond, and we see no reason why we should not reach the same conclusion with respect to the reconsignment of cars to points within the switching district. While the long continuance of the latter service without charge suggests that it was included in the rates, and of this there is some evidence in the case cited, undoubtedly the service within the switching district costs the carriers more than the reconsignment for points beyond. Moreover, the use now made of the privilege within the switching limits has become more extensive than was formerly the case and proportionally more burdensome. Reconsigned cars, as we understand the record and what was said on the argument, also enjoy two demurrage periods. It is but natural also that coal dealers, so long as they may use coal cars for storage purposes, will not find it necessary to supply themselves with storage facilities. In times of car shortage the result is not only to deprive the carriers of the use of their equipment and

of the full use of their terminal facilities, but, what is more important, to deprive the general shipping public of the full use of the equipment and terminal facilities of the carriers. The record makes it clear not only that the proposed charge, under the conditions hereinafter mentioned, is reasonable for the service rendered, but that its tendency can not fail to be of advantage to shippers at large.

On the record we find that there is no discrimination in the proposed charge against dealers in coal at Detroit in favor of dealers in the same commodity at other points; and also that the proposed charge is not unreasonable when considered by itself and wholly apart from the conditions that have occasioned the congestion at Detroit or in a material measure contribute to it. In justice, however, to the coal dealers of Detroit these contributing causes may not fairly be disregarded. It was said on argument by the delivering lines that the troubles at Detroit are due to the poor service on the connecting lines. The record, however, does not permit us nicely to balance the evidence and to say just how far the inefficient and unsatisfactory operation of the lines participating in the movement of coal from West Virginia and Ohio mines to Toledo may be responsible for the congestion at Detroit. But it was substantially conceded by the carriers serving Detroit that the inefficient operation of the carriers having the line haul to Toledo was the cause of no small part of their difficulties at Detroit. Their contention was that they were not responsible and ought not to be held responsible for defects in the operation of their connections. As the traffic moves under through rates it is not altogether clear that this contention is sound. But without determining here how far a delivering carrier may fairly be held responsible in these particulars for the faults of omission and commission in the operation of its connections when the traffic moves under a joint rate, it is at least clear that the delivering lines owe to such shippers under joint rates the obligation to do what they reasonably can to avoid delays in the delivery of their traffic. It appears that one of the lines entering Detroit has undertaken to notify consignees of the arrival of coal cars on its tracks at Toledo, and that the result has been practically to relieve it of any embarrassment in the handling of its coal traffic at Detroit. Such notice gives the coal brokers ample time in which to give their reconsigning orders before the cars reach the Detroit terminals of that line. This practice, it appears, has proved successful in the case of that carrier, and there is reason for believing that like results will immediately follow the putting in operation of a similar practice by the other carriers. It may be, as contended by them on the argument, that an undertaking of this duty will cause some additional expense and, through mistakes and errors, may subject them to some additional liability. We think, however, on all the facts shown of record, that

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this is a duty that they owe to the shippers and that it is unreasonable, and would impose an unjust burden on the traffic, to exact a reconsigning charge without undertaking the duty of giving such notice to consignees, thus affording them an opportunity of giving disposition orders before their carload shipments reach the Detroit terminals where the service of reconsigning becomes an expensive one to the carriers.

We have reached these conclusions on the special conditions shown to exist at Detroit, and we shall expect the delivering lines at that point to make arrangements without delay for putting in effect the practice of giving notice to consignees of the arrival of the coal cars on their respective tracks at Toledo, and to provide in their tariffs that the reconsigning charge will not be imposed in any case when the reconsigning order is given by the consignee before the car reaches Detroit. If the coal dealers, having such notice, are not able to give their reconsigning orders before the cars reach Detroit it is entirely just and reasonable that they should pay the proposed charge for the reconsigning service.

The result of such a practice, we are confident, will go far toward eliminating the congestion at Detroit, and thus give the shipping public a more ample and effective use of the equipment of the carriers and of their terminals. At the same time it will give the carriers reasonable compensation for the service, when it must necessarily be performed in the interest of the shipper, without imposing on the shipper in other cases a charge due in no small part to the inefficient operation of the carriers.

The charge in question is still under suspension, but upon being advised that tariffs have been filed carrying out the views here expressed an order will be entered permitting the proposed charge to be made under the conditions here suggested. We shall, however, hold the whole record before us for such further orders in the premises as experience during the coming winter, under the plan here proposed, may require.

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No. 4620.

JULIUS KESSLER & COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted June 17, 1912. Decided December 2, 1912.

Joint rate of 75 cents per 100 pounds on whisky in glass, any quantity, from Athertonville, Ky., to Mobile, Ala., and New Orleans, La., found unreasonable to the extent that it exceeds the combination of rates to and from Louisville, Ky.

E. Helm Walker for complainant.

William A. Northcutt, William G. Dearing, and Albert S. Brandeis for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant corporation operates a distillery at Athertonville, Ky. In its petition, filed January 10, 1912, defendant's commodity rate of 75 cents per 100 pounds for the transportation of whisky in glass from Athertonville, Ky., to Mobile, Ala., and New Orleans, La., is challenged as unreasonable and unduly discriminatory. There is included in the petition a prayer for reparation, but upon disclosure of the fact that petitioner had not paid the amount claimed this prayer was formally withdrawn.

Athertonville is on defendant's Lebanon branch, 14 miles from Lebanon Junction, Ky., the junction point with the main line, and is 654 miles from Mobile and 793 miles from New Orleans. Louisville, Ky., is distant from Mobile 670 miles, and from New Orleans 809 miles, and to both points there is a commodity rate of 49 cents from Louisville. From Athertonville to Louisville, 44 miles, there is a commodity rate of 16½ cents. The present commodity rate from Louisville was established May 16, 1910, previous to which time the second-class rate of 75 cents applied, the rates from Louisville and from Athertonville then being the same.

These facts are the basis of this complaint and are mainly relied upon to support the allegation that the Athertonville rate is unreasonable in so far as it exceeds the Louisville rate, or at least to the extent that it is greater than the Louisville combination. Complainant's chief witness stated that, considering the distance hauled,

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he was not prepared to say that the rate was unreasonable, but based his contention principally upon a comparison with the Louisville rate.

In addition to Athertonville there are several distillery points on the Lebanon branch and on the Bardstown branch, to the north of and paralleling the Lebanon branch, from all of which the rate is the same as from Athertonville.

It is stated that between Louisville and other Ohio River crossings, Peoria, Ill., and St. Louis, Mo., there is a fixed relationship of rates, and the reduction of the Louisville rate from 75 cents to 49 cents resulted from an arbitrary reduction by the Illinois Central Railroad Company of the Peoria rate to 55 cents. The rates at the same time were: From Cincinnati, Ohio, 53 cents; St. Louis, Mo., 49 cents; and Evansville, Ind., and Owensboro, Ky., 47 cents. It is contended by defendant that from Louisville the old rate of 75 cents was reasonable, and as long as it existed defendant was willing to maintain the same rate from Athertonville, but when forced by competition to establish the lower rate from Louisville defendant found it inexpedient to extend the reduction to local points; and that in doing this it adopted the same course as its competitors.

That the conditions of transportation from Athertonville are substantially different from those from Louisville can not be doubted. We do not find upon the record sufficient justification for requiring from Athertonville the maintenance of a rate equivalent to that in effect from Louisville, but no good reason has been advanced for the exaction of a higher rate from Athertonville than that produced by the combination of the rate from Athertonville to Louisville and the rate from Louisville to Mobile and New Orleans. The combination on Louisville makes a through rate of 65½ cents, being 16½ cents to Louisville and 49 cents to Mobile and New Orleans. Shipments of whisky from the Lebanon branch consist in the main of less-than-carload lots and are transported by local trains to Louisville and there consolidated with through cars for Mobile and New Orleans.

Upon the record we are of the opinion and find that the rate of 75 cents is unreasonable to the extent that it exceeds the combinations of intermediate rates based upon Louisville.

For the future defendant will be required to maintain from Athertonville to Mobile and New Orleans rates on whisky in glass, any quantity, which shall not exceed the sums of the rates contemporaneously maintained from Athertonville to Louisville and from Louisville to Mobile and New Orleans. An order will be entered accordingly.

No. 4499.

CORPORATION OF THE CATHEDRAL OF THE INCARNATION

v.

LONG ISLAND RAILROAD COMPANY.

Submitted July 11, 1912. Decided December 2, 1912.

In taking advantage of the low price of coal, complainant ordered at one time an unusual quantity of coal for delivery upon its private siding. Due to the lack of facilities for accommodating the unusual number of cars delivered under the above circumstances, certain demurrage charges were assessed, which complainant alleges were unjust and unreasonable; *Held*, That defendants can not be required to be at all times prepared to furnish more than the reasonable facilities necessary for the usual amount of business done at a particular point upon its line, and upon the facts in this case it can not be said that such facilities were not furnished complainant. Complaint dismissed.

H. L. Davis for complainant.

J. F. Keany, F. D. McKenney, and W. C. Carpenter for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is a corporation and conducts a school for boys known as St. Paul's School, at Garden City, N. Y. In its petition, filed October 17, 1911, it is alleged that on certain carload shipments of coal received at its school during the months of March and April, 1911, the defendant collected unreasonable and unlawful demurrage charges for the detention of cars, in the sum of \$232. Reparation is sought.

Complainant received coal at its school plant at Garden City on a trestle that had a capacity of four cars. The town has about 1,300 inhabitants, and all switching service was done by a local freight train that went through once a day, so that with the ordinary instrumentalities it was possible to have only four cars placed each day. It was the custom of the complainant to order coal forwarded in lots of four cars at a time in keeping with this system of delivery. In the spring of 1911, in order to take advantage of a temporary reduction in the price of coal, the complainant purchased 2,000 tons and ordered the coal to be forwarded as rapidly as possible.

The cars began arriving on March 24, and such a number accumulated that on April 5 the head master of the school appealed to the superintendent of the railroad for additional switching service, and was informed that while the company would do the best it could to meet the emergency, extra shifts could only be made by sending an engine and crew from Jamaica, for which the charge provided by the tariff would be \$35. No arrangement was made for this special service. It is stated by the defendant that the daily local freight furnished adequate facilities for handling the ordinary volume of traffic at Garden City and other points on the line, but that this large order of St. Paul's School was given without notice to the defendant and involved an unusual and temporarily increased demand for service.

The complainant undertook to meet the situation by having at hand a force of laborers to shovel back the coal and keep the bins in condition to receive the coal as fast as it could be dumped. Witness for complainant was unable to state, however, what percentage of the delay was due to complainant or what to the defendant. He testified that the total amount of reparation claimed is far more than complainant would have a right to expect, as it had a certain responsibility in the matter.

The representatives of the complainant knew of the switching service that was available at Garden City but ignored the question of possible congestion in deliveries in order to take advantage of the reduction in price of the coal. Complainant did not see fit to pay the cost of additional switching movements at the regular tariff rates and accepted the alternative by allowing demurrage to accrue. It can not be said that defendant is at fault in the matter of the delivery of complainant's coal under the circumstances disclosed, and an order will be entered dismissing the complaint.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 176.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN CLASS AND COMMODITY RATES BY CARRIERS OPERATING BETWEEN STATIONS IN THE STATES OF MISSOURI, KANSAS, AND NEBRASKA.

Submitted November 30, 1912. Decided December 10, 1912.

Rates between points upon the Joplin branch of the Missouri Pacific Railway Company and points upon its Northern and Virginia branches may be constructed by combination in the same manner as from points upon its line between Kansas City and St. Louis. Order of suspension vacated and the suspended tariffs allowed to become effective.

H. D. Driscoll, of Topeka Traffic Association, for protestants.

F. G. Wright and *H. G. Herbel* for Missouri Pacific Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

One branch of the Missouri Pacific Railway extends southeastwardly from Kansas City, Mo., to Pleasant Hill, Mo., and thence southerly to Joplin, Mo., which will be designated in this decision as the Joplin branch. Another branch, which will be termed the Omaha line, extends from Kansas City to Omaha, Nebr., taking the general direction of the Missouri River. A third branch, which will be termed the Northern branch, extends from Atchison, Kans., nearly due west in the northern part of the state of Kansas; while a fourth branch, here termed the Virginia branch, runs from Kansas City northwesterly to Virginia, Nebr., crossing the Northern branch at Goffs, Kans.

Rates from points upon the Missouri Pacific system in the state of Missouri to Omaha are usually constructed by adding a fixed arbitrary to the rate up to Kansas City. The first-class rate from such a point to Omaha would be, for example, 20 cents per 100 pounds more than the rate to Kansas City. Since the fourth section is observed at all points between Kansas City and Omaha by this line, the result has been to apply the Omaha rate from points in Missouri to most points upon the Omaha line north of Atchison.

Rates to points upon the Northern branch and the Virginia branch from most stations upon the Missouri Pacific in Missouri are constructed by combinations on Kansas City, but in the past, from

points on the Joplin branch, class rates to points upon the Virginia branch and upon the Northern branch as far west as Yuma, Kans., have not exceeded the Omaha rate, which has resulted in applying the Omaha rate as a blanket to most stations upon these branches. While this has been true of class rates, commodity rates have usually increased upon these two branches with increasing distance, being sometimes made by full combination upon Kansas City and sometimes arbitrarily constructed.

The purpose of the tariffs under suspension is to cancel these through class rates between points upon the Joplin branch and points upon the Virginia branch and the Northern branch, allowing the combination upon Kansas City to take effect. The Missouri Pacific contended on the hearing that there never had been any reason why rates between points upon the Joplin branch and the territory in question should not be constructed in the same manner as from points upon its line between Kansas City and St. Louis, Mo.

We sustain this contention. Competitive conditions at Omaha have established rates from points upon the lines of the Missouri Pacific in Missouri to Omaha which are less than the combination of locals upon Kansas City, and this under the operation of the fourth section has resulted in the application of that lower rate to points upon the Omaha branch between Kansas City and Omaha. But there is no apparent reason why a blanket rate should be applied upon the Virginia branch, or upon the Northern branch from Whiting, Kans., to Yuma, a distance of 129 miles, and in our opinion the suspended tariffs should be allowed to take effect.

In so holding we must not be understood as approving the present system of constructing rates between points east of the Missouri River and points in Kansas by full combination upon the Missouri River. The propriety of this system of rate construction is before the Commission in several cases, but is in no degree considered or passed upon at this time. We simply hold that rates between points upon the Joplin branch and points upon the Northern and Virginia branches may be constructed by combination so long as that method generally prevails. Whatever conclusion is finally reached with respect to this subject will, of course, apply to these rates.

25 I. C. C.

No. 4705.

THOMAS W. GILMORE & COMPANY ET AL.

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted October 26, 1912. Decided December 10, 1912.

On carload shipments of bituminous coal to the complainants at Rose Hill, Ill., a station in Cook county, the freight charge is 20 cents per net ton in excess of the charge for similar transportation to Ravenswood, Ill., a point in the Chicago switching district for the Chicago & North Western Railway. On anthracite coal the charge to Rose Hill is 10 cents per ton greater than to Ravenswood; *Held*, That this rate situation subjects the complainants to unjust discrimination and Rose Hill to undue and unreasonable prejudice and disadvantage, and that for the future the defendants shall not require the payment for the interstate transportation of coal in carloads to Rose Hill of a charge in excess of 5 cents per net ton over the charge for similar transportation to Ravenswood.

M. F. Gallagher for complainants.

C. C. Wright, C. A. Vilas, and A. H. Lossow for Chicago & North Western Railway Company.

Howard & Ballard for Chicago, Indiana & Southern Railroad Company.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The complainants in this case seek the establishment of a lower charge than is now applied by the Chicago & North Western Railway Company for transporting interstate shipments of coal from Chicago, Ill., to Rose Hill station, Ill., and for an order requiring all of the defendants to cease and desist discriminating against Rose Hill station in the matter of the application of the Chicago rate and the absorption of switching charges at Chicago. The present rate from Chicago to Rose Hill, 30 cents per net ton, is alleged to be unreasonable in and of itself and unjustly discriminatory as compared with the rates to other stations in the same locality.

Rose Hill is a station on the Milwaukee division of the Chicago & North Western Railway on the north side of the city of Chicago, inside the city limits, and about 10 miles from the passenger terminal of that carrier. Four of the complainants are in the coal

business at Rose Hill and the other two complainants own and operate greenhouses near that point. All of them receive carload shipments of coal at Rose Hill, the testimony showing that the deliveries average about 15 cars daily during the winter and 5 cars during the summer. The complainants submitted in evidence an original expense bill showing the consignment to Rose Hill from an interstate point of a carload of coal, and the payment at Rose Hill to the Chicago & North Western Railway Company of charges for the entire transportation service, including that performed by such carrier. Reparation is asked on this and similar shipments moving within the statutory period of two years prior to the date the complaint was filed.

The Chicago switching district for the Chicago & North Western Railway extends to, and includes, Ravenswood, on the Milwaukee division; Des Plaines, on the Wisconsin division; Greenwood, on the Mayfair cut-off; and Maywood, on the Galena division. It appears from the evidence that there is greater analogy in the circumstances and conditions surrounding the transportation to Rose Hill and to Ravenswood than to Rose Hill and any other point in the Chicago switching district. The complainants' strongest claim for relief seems to rest upon the similarity of the situation with respect to Ravenswood and Rose Hill.

On bituminous coal originating at mines in Illinois, Indiana, and points east of the Ohio-Indiana state line, the Chicago rate is applied to Ravenswood and all of the other stations within the Chicago switching district. The charge of the Chicago & North Western Railway Company for the delivery of coal within the Chicago district is covered either by divisional arrangements with the coal-carrying roads or by the absorption tariffs of such roads. This charge to Ravenswood is 20 cents per net ton, but it is paid by the coal-carrying roads and not by the shipper. At Rose Hill the situation is different. There are no joint rates on soft coal to that point, but the rate is made on combination of the rate to Chicago plus the Chicago & North Western charge of 30 cents per net ton to Rose Hill. Of this rate of 30 cents the coal-carrying roads absorb only \$4 per car of 80,000 pounds or less and 10 cents per ton additional on cars of over 80,000 pounds. The result of this arrangement is that on cars of 80,000 pounds or more the shipper of soft coal to Rose Hill pays a freight charge of 20 cents per ton in excess of the charge paid by the shipper of soft coal to Ravenswood.

On anthracite coal the various lines to Chicago provide for absorption of Chicago & North Western switching charges to the extent of \$4 per car, regardless of weight. This applies to Rose Hill as well as to Ravenswood and other points within the Chicago switching district. The charge of the Chicago & North Western to Ravenswood

is 20 cents and to Rose Hill 30 cents, so that on anthracite coal consigned to Rose Hill the net transportation charge is 10 cents per ton greater than to Ravenswood.

The counsel for complainants stated that he based his whole case on the principle that coal yards operating in the same locality should be under the same burden of transportation charges. It appears from the testimony that the union charge for delivering coal to consumers within 3 miles of the yard is 50 cents per ton; that there are yards at Ravenswood and that Rose Hill is only 1.41 miles beyond Ravenswood on the same division of the Chicago & North Western Railway. Thus the dealer at Rose Hill, in order to compete in the same territory with the dealer at Ravenswood, must meet the difference in the freight rate amounting to 20 cents per ton on soft coal and 10 cents per ton on anthracite, an amount, it is claimed, which is a very important item, and, as to soft coal, practically wipes out the profit in conducting a coal business at Rose Hill.

The testimony of the witnesses for the defendants shows that the cars consigned to Rose Hill are billed in exactly the same way as cars consigned to Ravenswood; that the same engine is used to move cars to Ravenswood and to Rose Hill, and that the transportation service to Rose Hill is similar to that to Ravenswood. The defendants in denying that the discrimination at Rose Hill is undue, point to the fact that it is a residential district as compared with all the points with which Rose Hill claims to be discriminated against, and that the suburban passenger traffic on the Milwaukee division is greater than on any other division of the Chicago & North Western Railway, the result of which is to make the transportation of freight to Rose Hill more hazardous and expensive than to other sections.

It appears, however, that these facts apply with practically equal force to Ravenswood, which is also in the residential district, and through which the same suburban traffic passes. It also seems that the freight movement to Rose Hill and Ravenswood is performed during the period of the night when there is little, if any, passenger traffic. The defendants' fear of placing coal at Rose Hill on a lower rate basis does not extend to some of the other commodities that are shipped there, as the tariffs show that the lines into Chicago apply Chicago rates to Rose Hill, as well as to Ravenswood, on commodities other than coal when the rate into Chicago is $2\frac{1}{2}$ cents per 100 pounds or higher and the charges to Chicago are \$15 per car or over.

There is no substantial difference, so far as the record reveals, in the transportation conditions existing with respect to the movement of coal from the same interstate points to Rose Hill and Ravenswood, unless it is in the distance of 1.41 miles. On a line haul this mileage is of no consequence, but in this case, where the delivering

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carrier performs only a terminal delivery service, such carrier is entitled to receive a reasonable charge for the additional movement. We think that the shippers at Rose Hill should not pay on shipments of coal a transportation charge of more than 5 cents per net ton, with a minimum of \$2 per car, in excess of the net charge on similar shipments to Ravenswood. This will afford the delivering carrier compensation for the slightly additional service performed by it, and will not require any change in the existing boundaries of the Chicago switching district. We appreciate the force of the defendants' claim that the zone to which the Chicago rate applies is determined by the manufacturing district which produces outbound, as well as inbound, tonnage, and we are not prepared to say that Rose Hill, considering its location and lack of industries, should come within the list of points taking the Chicago rate. It is our opinion, from the facts of record, that the rate situation at Rose Hill and Ravenswood, before described, subjects the complainants to unjust discrimination and Rose Hill to undue and unreasonable prejudice and disadvantage, and that for the future the defendants shall not require the payment for the interstate transportation of coal in carloads to Rose Hill of charges that are in excess of 5 cents per net ton, with a minimum of \$2 per car, over the charges for similar transportation to Ravenswood. An order will be issued in accordance with these conclusions.

We are further of the opinion that the complainants were damaged by the payment on shipments to Rose Hill, made in their behalf, of freight charges on soft and anthracite coal that exceeded 5 cents per net ton over the charges in effect at the same time to Ravenswood, and that they are entitled to an award of reparation in the amount of such excess charges. No order as to reparation will be issued until the receipt and approval by the Commission of a statement, agreed to by the complainants and defendants, which shall show in detail the facts necessary to identify the shipments embraced within the reparation claim and the amounts of reparation due each complainant under the findings herein.

25 I. C. C.

FOURTH SECTION APPLICATION NO. 1548.
IN RE SOUTHERN RAILWAY COMPANY.

FOURTH SECTION APPLICATION NO. 1952.
IN RE LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted November 30, 1912. Decided December 10, 1912.

Applications to continue to disregard the fourth section from points upon the Cumberland Valley division and the Clear Fork branch of the Louisville & Nashville Railroad Company and from points upon the Clear Fork branch of the Southern Railway Company to the Buffalo-Pittsburgh territory, via Cincinnati, denied; but with reference to the circuitous routes via Norton and Knoxville no order will now be made, pending readjustment via the short-line routes.

C. B. Northrop for Southern Railway Company.

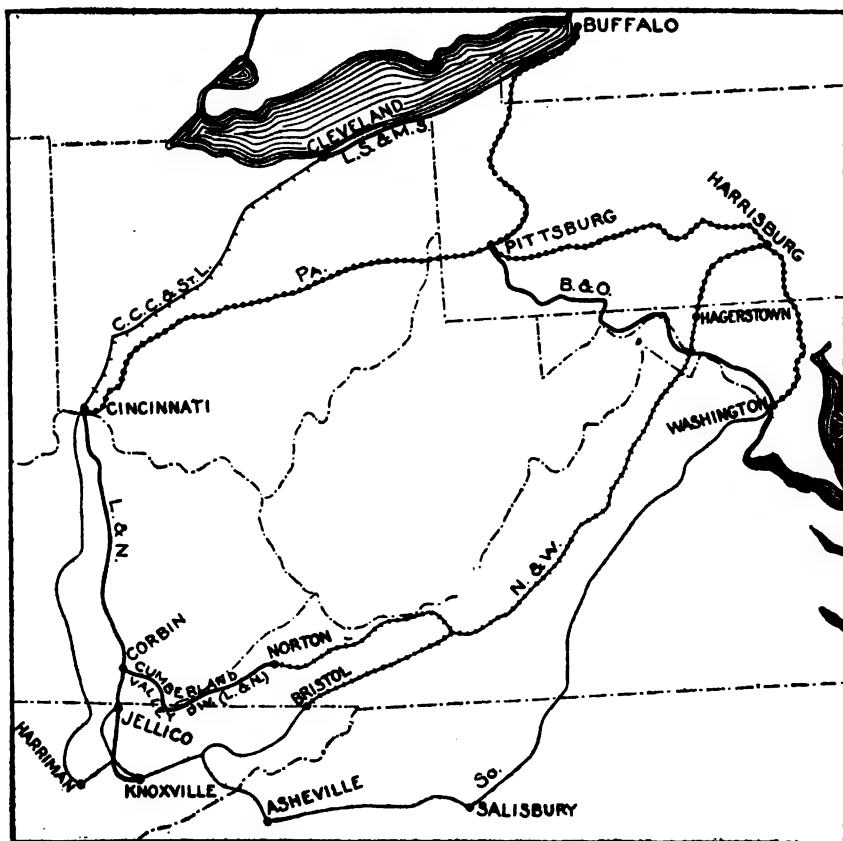
J. A. Ridgely for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

In *Appalachia Lumber Co. v. L. & N. R. R. Co.*, 25 I. C. C., 193, the complainant attacked rates on lumber from points upon the Cumberland Valley division of the Louisville & Nashville Railroad Company to Buffalo-Pittsburgh territory, and certain other points similarly situated, via Cincinnati, Ohio, as in violation of the fourth section in that higher rates were charged to intermediate points north of the Ohio River. It appeared upon the hearing that this situation was protected by a fourth-section application of the Louisville & Nashville Railroad Company and its connections, and it was further stated by that company that the reason for the disregard of the fourth section in question was competition between that line and the Southern Railway Company from points in the vicinity of Jellico, Tenn. Investigation showed that the Southern Railway also maintained rates from this region to the Buffalo-Pittsburgh zone which violated the fourth section in the same manner and to substantially the same extent as did those of the Louisville & Nashville. Thereupon, both these fourth-section applications, in so far as they involved the rates in question, were set down for investigation and a hearing has been had thereon.

The questions presented will be best understood by reference to the map below. The Cumberland Valley division of the Louisville & Nashville extends a distance of 118 miles between Corbin, Ky., and Norton, Va. What is known as the Clear Fork branch runs from Jellico to Fonde, a distance of 20 miles. Both Corbin and Jellico are upon the main line of the Louisville & Nashville between Knoxville and Cincinnati. The Cumberland Valley division is operated by the Louisville & Nashville. The Clear Fork branch is owned and operated jointly by the Southern and the Louisville & Nashville. The destination territory covered by this proceeding embraces the Pitts-



burgh-Buffalo zone and certain points to the west. All these points are controlled by the same underlying principle, and Pittsburgh may be selected as illustrative of the whole.

As appeared in the case of the Appalachia Lumber Company, above named, rates from the Cumberland Valley division to points north of Cincinnati are generally made by the full combination upon

Cincinnati, but rates from these points of origin to Pittsburgh are less than the combination, with the result that the intermediate rate in many cases exceeds the Pittsburgh rate. Rates from the Clear Fork branch are constructed in the same way as from the Cumberland Valley division, both by the Louisville & Nashville and by the Southern, and those rates therefore violate the fourth section to the same extent and in the same manner.

The fourth section application of the Louisville & Nashville asks leave to continue this disregard of the fourth section from points upon the Cumberland Valley division and the Clear Fork branch, including rates from Jellico and Corbin and also apparently from other points in that vicinity. The application of the Southern Railway asks for the same relief with respect to points of origin upon the Clear Fork branch, including Jellico and other points upon the Southern in that vicinity.

The distance from Jellico to Cincinnati, via the Louisville & Nashville, is 215 miles. The Southern Railway carries traffic from Jellico to Cincinnati south through Harriman and then north to Cincinnati, a distance of 333 miles. It will be seen therefore that the Southern Railway from Jellico and points upon the Clear Fork branch is a circuitous route as compared with the Louisville & Nashville to Cincinnati, but the Southern Railway observes the fourth section between Jellico and Cincinnati and asks no relief with respect to that portion of the haul.

No one who appeared at the hearing was able to state why rates from this territory to Pittsburgh had originally been made lower than to intermediate territory. In case of both the Louisville & Nashville and the Southern the line through Cincinnati is the short line. No reason could be assigned by either of these carriers for making a lower rate to-day to Pittsburgh than to intermediate points, and both companies stated upon the hearing that upon further reflection they would not attempt to justify these higher intermediate rates.

We are unable to see any ground upon which a prayer for relief from the fourth section as to the lines of these defendants through Cincinnati can be predicated, and the prayer of the above fourth section applications as to these routes will be denied, as of March 1, 1913. While the assignment of the hearing by its terms limited the scope of that investigation to points upon the Cumberland Valley and the Clear Fork branches, manifestly the same considerations must apply to other points in this territory, although technically they can not perhaps be included in our order denying relief.

The carriers stated that they proposed to remove the present violations of the fourth section by advancing the rates to the Buffalo-Pittsburgh territory, and asked whether this would be satisfactory

to the Commission. Plainly these proposed advances are not before us and can not be approved or disapproved, further than may be inferred from our decision in the *Appalachia case, supra*.

It will be seen from an examination of the above map that while the direct line from the points of origin in question to Pittsburgh is through Cincinnati, other routes are open both to the Louisville & Nashville and the Southern. Thus, from points upon the Cumberland Valley division, the Louisville & Nashville may handle the traffic through Norton in connection with the Norfolk & Western Railway Company to Hagerstown, Md., and thence by either the Baltimore & Ohio or the Pennsylvania lines to Pittsburgh. The Southern may carry this business south from Jellico through Knoxville, Tenn., and thence via Bristol, Va., in connection with the Norfolk & Western to Hagerstown or via its own line through Asheville, N. C., to Washington, D. C., and thence by either the Baltimore & Ohio or the Pennsylvania to Pittsburgh. The carriers stated that while they would not undertake to justify a disregard of the fourth section by the lines through Cincinnati, they did ask relief with respect to these latter routes upon the ground that they were circuitous.

The distance from Jellico to Pittsburgh via the Louisville & Nashville through Cincinnati is 526 miles. From the same point via Norton and the Norfolk & Western the distance is 811. From Jellico to Pittsburgh via the Southern Railway, through Cincinnati, is 644 miles, via Bristol and Hagerstown 813 miles, and via Asheville and Potomac Yard, Va., 975 miles. It will be seen, therefore, that these routes via Hagerstown and Potomac Yard are, within all definitions by the Commission, circuitous routes, as to which the relief should be granted, provided the other conditions permit. It can not be known how this will be until the rates from these points by the short lines through Cincinnati have been established. No order will be made, therefore, with reference to these circuitous routes until after March 1, 1913. If, when the short-line rates have been readjusted, the cases fall within the rules which we have applied to circuitous routes, orders of relief will then be entered.

25 I. C. C.

No. 4832.
ANACOSTIA CITIZENS ASSOCIATION
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted October 24, 1912. Decided December 3, 1912.

1. The denial of free store-door pick-up and delivery of certain less-than-carload traffic to the citizens of Anacostia, D. C., while such free service is extended to other sections of the city of Washington, D. C., found to be unjustly discriminatory in so far as the Philadelphia, Baltimore & Washington Railroad Company is concerned, but not with respect to the Baltimore & Ohio Railroad Company, which maintains a freight station in Anacostia.
2. Defendants, by arranging to place their baggage checks at the residences of passengers in certain sections of Washington to the exclusion of passengers located in Anacostia, unjustly discriminate against the latter.
3. Complaint against defendant express companies satisfied and dismissed.

F. S. Bright and *A. E. Beck* for complainant.

W. C. Coleman for Baltimore & Ohio Railroad Company.

Henry Wolf Bikle for Philadelphia, Baltimore & Washington Railroad Company.

T. B. Harrison, jr., for Adams Express Company and Southern Express Company.

Branch P. Kerfoot and *F. W. Bellamy* for United States Express Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Anacostia is a section of southeast Washington, D. C., detached from the city proper by the eastern branch of the Potomac River, but connected by a bridge about one-fourth of a mile in length. Its citizens complain that they are unjustly discriminated against in the matter of house and store door pick-up and delivery of less-than-carload freight, express matter, and baggage. The complaint against the express companies was based on their refusal to pick up and deliver express matter at other than designated substations in Anacostia, while in other portions of Washington this service is extended to house and store doors. Since the hearing the express companies have acceded to the demands of complainants, who now ask that this portion of the complaint be dismissed. It will be so ordered.

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The Philadelphia, Baltimore & Washington Railroad, through the Knox Express Company (now the Merchants Transfer & Storage Company), and the Baltimore & Ohio Railroad, through the Blue Line Transfer Company, make free pick-up and delivery of certain less-than-carload shipments at Washington within defined limits. Such limits include Georgetown, in the extreme northwestern part of Washington, but have never included Anacostia. The reason given by defendants for this discrimination is that Anacostia is primarily a residential district and its traffic will not justify the maintenance of the service asked. The Baltimore & Ohio has established a freight station in Anacostia within one or two blocks of practically all the business houses, and through that station both carload and less-than-carload freight is handled. Practically all the less-than-carload freight must be moved through the Baltimore & Ohio freight station in Washington proper, where it is reloaded into a car or cars for the Anacostia station, the proceeding being reversed on outgoing shipments. A similar station is maintained by the Baltimore & Ohio in Georgetown and another by the Philadelphia, Baltimore & Washington at Rosslyn, Va., a short distance from Georgetown over the Aqueduct Bridge; nevertheless less-than-carload freight of the first four classes to or from Georgetown is drayed free from or to defendants' Washington freight depots.

It is true that Anacostia is a residential section, most of whose population pursue their sundry vocations in Washington proper. It has its merchants, however, some forty-five in number, much the same as other enterprising suburbs, and on these merchants its citizens must be largely dependent for their supplies. In the recent case of *Casassa v. P. R. R. Co.*, 24 I. C. C., 629, we found that the free-delivery service to Georgetown and its denial to Casassa and some sixty or seventy other merchants in the vicinity of Fourteenth street and Park Road northwest was unjustly discriminatory. The greater number of business houses in that district is perhaps not sufficient to create any substantial dissimilarity, while the difference in distance on the whole favors Anacostia, being, from the Baltimore & Ohio freight station in Washington, but little in favor of Fourteenth and Park Road and, from the Pennsylvania station, about two miles or more in favor of Anacostia. The deliveries to Georgetown materially increase the distance in favor of Anacostia. But there are several distinctions that must be noted between the Fourteenth and Park Road territory and Anacostia. The former lies in the general route that traffic would take between the Baltimore & Ohio Washington station and Georgetown, necessitating a detour of something less than a mile. From the Philadelphia, Baltimore & Washington station, located at Four and one-half street and Vir-

ginia avenue southwest, the route to Georgetown and to Fourteenth and Park Road is not common. Considerable traffic, however, has been developed by the extension of business houses along Fourteenth street, and Georgetown for a number of years has been quite a thriving business center. This furnishes return loads and thereby largely diminishes the operating cost. Anacostia can supply a similar volume of tonnage neither on pick-ups nor deliveries. Furthermore, the territory between the Washington depots and Anacostia is productive of little revenue for this service, and in this respect the conditions at Anacostia and at Georgetown and Fourteenth and Park Road are not entirely analogous.

It is difficult even to approximate the exact tonnage to Anacostia, as no witnesses directly concerned enlightened us on this point. The refusal of both the rail carriers to make free deliveries and the existence of the Baltimore & Ohio's substation in Anacostia results in practically all less-than-carload traffic reaching Anacostia via the Baltimore & Ohio. That carrier's Washington station is fully three miles from the business section of Anacostia and so far as it is concerned we do not think the citizens of Anacostia are unduly prejudiced as compared with the merchants of Georgetown. The Philadelphia, Baltimore & Washington freight station, however, is within one and one-half miles of the Anacostia merchants, who must either dray their freight at their own expense from or to this station or, if possible, route it via the Baltimore & Ohio. As to defendant Philadelphia, Baltimore & Washington Railroad, we think the existing discrimination is unjust, and an order will be entered directing that it cease. It may be that this defendant can and would prefer to enter into an arrangement with the Baltimore & Ohio Railroad whereby the less-than-carload traffic moving over the Philadelphia, Baltimore & Washington might be switched from and to the Baltimore & Ohio Railroad's Anacostia freight station without additional expense to the shipper or consignee. Such an arrangement, or the extension of free store-door pick-up and delivery to Anacostia, so long as it is extended to Georgetown, will be considered a compliance with our order.

The attack upon the practice in connection with the collection and delivery of baggage is directed primarily against the Union Transfer Company, although the rail carriers are also parties defendant. For a certain charge the transfer company calls for and delivers baggage within practically all sections of the city of Washington except Anacostia. By an arrangement between the transfer company and the railroads a passenger, holding the proper railroad ticket, may have his baggage checked directly from his Washington residence to a specific street address in another city, or from such address

to his Washington home. For this service the transfer company makes a charge, none of which accrues to the railroads. To or from some of the more distant sections of the city a slightly higher charge is exacted. Anacostia, however, is not given this service at any price, and this is the basis for its protest.

The transfer company, while a common carrier, is not a carrier by railroad and is not subject to the act to regulate commerce, *Parmalee case*, 12 I. C. C., 39, and against it we can issue no order. But the transfer company occupies a peculiar relation to the railroad companies, which grant to it the exclusive privilege of transporting and checking baggage, and it is suggested that for this reason the railroad companies are responsible for the acts of the transfer company. A somewhat analogous question was before us in *Cosby v. Richmond Transfer Co.*, 23 I. C. C., 72, where Cosby, operating a local transfer company, sought to compel the railroads at Richmond, Va., to grant to him the privileges accorded the Richmond Transfer Company, a concern substantially similar to the Union Transfer Company. His right to relief was predicated upon the allegation of discrimination against his company, in that he was not permitted to solicit baggage upon incoming trains, although, he averred, the charge he would make to passengers for this service would be substantially less than the alleged unreasonable charge of the preferred company.

We decided that over the transfer company and its charges we had no jurisdiction; that the railroads were within their well-recognized rights in entering into an exclusive contract with the Richmond Transfer Company, such action not constituting an unjust discrimination; that in the absence of unjust discrimination against *passengers* this Commission could issue no order against the railroads.

The *Cosby case*, *supra*, may be distinguished from the case at bar in that the same element of discrimination here presented was not there involved. True, in that case, we said that the transfer company was the agent of the passenger rather than of the railroad, but this was our conclusion upon a consideration of the transaction between the passenger and the transfer agent on the train, where the passenger turned over to the agent the railroad check for his baggage, paying the agreed charge, and receiving a receipt from the transfer company. It was in no wise incumbent upon the passenger to employ the transfer company. He might have transferred his own baggage, or contracted independently for its transfer; but for his own convenience he made the transfer company his agent to obtain his baggage from the railroad and deliver it at his residence. Such a service is not involved in the instant case. There is no complaint against the transfer of baggage from the house to the station, or vice versa. The complaint is that while the service is accorded others, Anacostia is

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denied the privilege of having the baggage of its passenger-citizens checked from their residences through to interstate destinations, or from such destinations through to their homes.

In the execution of this service to the preferred localities, defendant railroad companies have placed within the hands of the Union Transfer Company their respective baggage checks which are given to the passenger at his residence by the transfer company. The passenger then looks to the railroad company for his baggage, and is not concerned with any misfeasance or negligence on the part of the transfer company. If the baggage be lost by the transfer company, the railroad must honor or protect its own check. Clearly, therefore, the transfer company has become the agent of the railroad, and, without now discussing the broad question of how far such a principal is responsible for the acts of its agent, we think it manifest that the railroad defendants, by placing their baggage checks at the homes of passengers in certain sections of Washington to the exclusion of passengers located in Anacostia, are guilty of a discrimination; and it only remains to determine whether such discrimination is unjust.

The Union Transfer Company denies our jurisdiction, and did not appear at the hearing. The railroads did not interest themselves in the baggage complaint, apparently leaving that to the transfer company. Anacostia is considerably nearer the Union Station than most of the preferred localities, and it can not be argued that its smaller population should deprive it of the relief sought. We are not asked to fix the charge the transfer company should make, which, according to complainant's counsel, might properly be slightly in excess of the rate to or from the central sections. We find nothing in this record that justifies the withholding of this service from the residents of Anacostia while it is extended to other residents of Washington, and our opinion is that the discrimination practiced by the defendant railroad companies is unjust and should be removed.

An order in accordance with these findings will be issued.

25 I. C. C.

No. 4510.
W. C. NORRIS
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted June 19, 1912. Decided December 2, 1912.

Rate of 40 cents per 100 pounds on bar iron in carloads from St. Louis, Mo., to Tulsa, Okla., found to be unreasonable, and unduly discriminatory as compared with a rate of 34 cents per 100 pounds on sucker rods and pull rods, minimum weight 40,000 pounds. Lower rate prescribed for the future.

F. P. Sutherland for complainant.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

J. C. Burnett for Atchison, Topeka & Santa Fe Railway Company.

John F. Ryan for National Supply Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant is engaged at Tulsa, Okla., in the manufacture from bar iron of certain articles, commercially known as sucker rods and pull rods, which are used in the operation of oil wells. His petition, filed October 21, 1911, alleges that the rate on bar iron from St. Louis, Mo., to Tulsa, Okla., and points in that vicinity is 40 cents per 100 pounds; that the rate on sucker rods and pull rods to Tulsa is 34 cents per 100 pounds; and that the rates on the sucker rods and pull rods to other Oklahoma points varies but slightly from the Tulsa rate; that a rate on the raw material higher than the rate on the product is grossly unfair and discriminatory and renders it impossible for him to compete with the manufacturers of sucker rods and pull rods in St. Louis and other places. Removal of the discrimination and reasonable rates for the future are sought.

Sucker and pull rods are manufactured from bar iron in lengths of several feet each. In the process of manufacture each length of iron is headed and fitted for connection with other rods by use of a clamp and bolt, which are essential parts of the complete rod. The average aggregate length of joined rods used in a well is 1,800 feet.

The rates referred to by the complainant are carload commodity rates, the rate from St. Louis being 40 cents per 100 pounds on bar iron, subject to a minimum weight of 36,000 pounds, while the rate

on the sucker rods and pull rods, which it will be sufficient to herein-after designate simply as rods, is 34 cents, subject to a minimum weight of 40,000 pounds.

Complainant ships bar iron to Tulsa in both carloads and less than carloads. His shipments of rods from Tulsa are likewise made in both carloads and less than carloads. The complaint, however, goes only to the alleged discrimination in the rates on carload traffic from St. Louis. As indicative of the disadvantages under which he conducts his business, the complainant submitted in evidence a statement of comparisons of the straight carload rates on rods from St. Louis and other points of origin to various points in Oklahoma with the combination of carload rates applicable on shipments to the same points which he must pay to lay his rods down at these same Oklahoma points, the latter combination being made up of the carload rate on bar iron from St. Louis to Tulsa, plus the carload rate on rods out of Tulsa to the points in question. The comparison of carload rates to the principal points to which complainant ships and which are typical of the general situation, is exhibited in the following table, which is made a part of the petition:

Rates in cents per 100 pounds on sucker rods and pull rods in straight carloads.

To—	From—						Tulsa combination.	
	St. Louis, Mo.	Memphis, Tenn.	Peoria, Ill.	Chicago, Ill.	Minneapolis and St. Paul, Minn.	Robinson, Ill.	Rate on rods from Tulsa.	Combina- tion based on bar-iron rate of 40 cents, St. Louis to Tulsa plus rod rate out of Tulsa.
Avant, Okla.....	31	31	33.5	36	37	44	10.6	50.6
Bartlesville, Okla..	28	28	30.5	33	34	41	13.8	53.8
Cleveland, Okla....	35	35	37.5	40	41	48	12.2	52.2
Copen, Okla.....	26	26	28.5	31	32	39	16.2	56.2
Hamilton, Okla.....	38	38	40.5	43	44	51	12.2	52.2
Jenks, Okla.....	34	34	36.5	39	40	47	8	48
Kiefer, Okla.....	35	35	37.5	40	41	48	9	49
Muskogee, Okla.....	34	34	36.5	39	40	47	14.6	54.6
Nowata, Okla.....	28	28	30.5	33	34	41	23.8	63.8

The rates from Tulsa are as taken from the record. They are not on file with the Commission. The record does not show whether rods are shipped from any of these points other than Robinson, Ill., but the rates set forth in the table indicate that on carload traffic the complainant is at a marked disadvantage in competition with any shipper of rods who may be shipping from the points of origin stated; particularly is this true from St. Louis, where complainant buys his material. From this point, it will be observed, the variance is from 14 cents to 35.8 cents. It will also be noted that an

equalization of rates on rods and bar iron from St. Louis would ameliorate only in slight degree the conditions which complainant alleges are prejudicial to his business. That a higher rate on bar iron than on rods is common to the other points of origin referred to is apparent from the following comparison of the rates in force to Tulsa:

	From—			
	Memphis.	Peoria.	Chicago.	Robinson.
Bar iron, carload.....	40	42½	45	49
Rods, carload.....	34	36½	39	47

¹ Minimum 24,000 pounds; combination on East St. Louis, Ill.

This difference in favor of the rods does not exist, however, in the rates from the principal eastern points of manufacture to Tulsa, which are as follows:

From—	Rate on bar iron, c. l.	Rate on rods, c. l.	Differential in favor of bar iron.
Ironton, Ohio.....	45	53	8
Pittsburgh, Pa.....	54	56½	2½
Newport, Ky.....	45	49	4
Louisville, Ky.....	43	45	2
McKeesport, Pa.....	54	56½	2½
Portsmouth, Ohio.....	45	51	6
Black Rock, N. Y.....	54	56½	2½
Covington, Ky.....	45	49	4
Oil City, Pa.....	54	56½	2½

The complainant's witness admitted that no rods are manufactured in or are shipped from St. Louis and that the nearest manufacturing plant is at Robinson, Ill. He testified, however, that it was proposed to move the Robinson plant to St. Louis in which event the latter would be in a position to ship its rods into Tulsa or any point in Oklahoma, at from 7 to 25.4 cents per 100 pounds less than the rate at which complainant could lay his rods down. The defendants deny that the rate situation is prejudicial to complainant and contend that as much of complainant's traffic moves in less-than-carload lots, the situation appears in a different light when the less-than-carload rates are considered, as set forth in an exhibit from which the less-than-carload rate situation with respect to traffic to the destinations already selected appears below.

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To—	Rate from St. Louis, Mo., or East St. Louis, Ill., on rods.		Tulsa combination.	
	Rate in carloads minimum weight 40,000 pounds.	L. c. l. (fourth class).	L. c. l. rate on rods from Tulsa.	Net combination rate on l. c. l. shipments, made from Tulsa, based on bar-iron rate of 40 cents from St. Louis, plus l. c. l. rate on rods from Tulsa.
Avant, Okla.	31	62	12.4	52.4
Bartlesville, Okla.	28	55	16	56
Cleveland, Okla.	35	68	14.2	54.2
Copan, Okla.	26	55	18.7	58.7
Hamilton, Okla.	38	69	14.2	54.2
Jenks, Okla.	34	64	9.4	49.4
Kiefer, Okla.	35	68	10.6	50.6
Muskogee, Okla.	34	64	16.9	56.9
Nowata, Okla.	28	55	22	62

Compared with the rates on carload shipments it appears that complainant pays but slightly more per 100 pounds on less than carloads than on carload shipments, which evidently results from the narrow margin between the intrastate rates on carload and less-than-carload shipments. On the other hand complainant's competitor, shipping in less-than-carload lots from St. Louis, must pay a much higher rate than he would on carload lots.

Complainant's witness testified that during the past year he had shipped approximately 101 cars, of which 9 were from the Pittsburgh district; 3 from Gary, Ind.; 88 from St. Louis and 1 from Vincennes, Ind. In the meantime, eastern manufacturers of rods have established branch houses in Tulsa and other Oklahoma points, and at least one other manufacturing plant is now being established in Tulsa.

It was further testified that no rods are shipped from St. Louis. Another witness representing eastern shippers of rods, testifying in behalf of defendants, stated that no rods were manufactured in the latter place. The inference we draw from the testimony is that such rods as are shipped from St. Louis are manufactured elsewhere. Robinson, Ill., is said to be the nearest point to St. Louis where rods are manufactured.

There is evidence in the record of competition between complainant and the manufacturers and shippers of rods located at other points. A representative of the National Supply Company of Toledo, Ohio, and the National Supply Company of Kansas, which have branch houses in Tulsa, appeared and testified in behalf of defendants. The companies mentioned manufacture rods in Toledo and ship them in large quantities to Tulsa and other Oklahoma points. This witness

testified in respect of the so-called Pittsburgh basing-price theory which was to the effect that base prices on bar iron and steel at any point are based on the current Pittsburgh price for the commodity plus the freight rate from Pittsburgh, Pa. to the point where the quotation is made or from which the iron or steel is shipped. The freight rate from Pittsburgh to the point of shipment is arbitrarily added to the price quoted by the seller, regardless of the actual point of shipment. Witness illustrated the practice of the trade by stating that the rate on iron from Pittsburgh to Toledo is 13 cents per 100 pounds in carloads; that, if he should buy his bar iron in Cleveland, Ohio, which is perhaps his most accessible market of supply, the iron or steel would be sold at a delivered price in Toledo, and that price would be based on the market price of iron and steel bars in Pittsburgh plus the freight rate from Pittsburgh (instead of Cleveland) to Toledo. The rate on rods from Toledo to Tulsa is 52 cents; therefore, witness testified, it costs his firm, or any other Toledo shipper, 65 cents per 100 pounds to lay down rods in carload lots at Tulsa. The witness made the deduction that as the rate from Pittsburgh to Tulsa on bar iron is 54 cents, the complainant or other Tulsa manufacturer must therefore have an advantage of 11 cents per 100 pounds in the freight rate as compared with the Toledo manufacturer of rods. The deduction can not be commended because it assumes that the Tulsa manufacturer buys his iron in Pittsburgh, whereas he buys chiefly in St. Louis and insists that he has a right to buy there and to have a reasonable and nondiscriminatory rate applied for the transportation of the iron to Tulsa. The deduction disregards the Pittsburgh base-price theory, because under that theory the Tulsa manufacturer buying iron in St. Louis buys it on basis of the Pittsburgh base price plus the freight rate from Pittsburgh of 22½ cents added; in other words, he pays the Pittsburgh base price plus two freight rates—viz, 22½ Pittsburgh to St. Louis, plus the rate of 40 cents from St. Louis to Tulsa a total freight rate of 62½ cents per 100 pounds on bar iron as against the Toledo manufacturer's total rate of 65 cents on rods. This witness testified further that the adjustment of rates on bar iron and rods was such that the outside manufacturer of the rods was practically unable to compete with the local manufacturer at Tulsa, as a result of which he stated that he had, on behalf of his firm, opened negotiations with the railroads in an effort to have them make lower rates on rods into Tulsa, or else grant him a milling-in-transit privilege as is done on structural iron and steel articles. He further stated that rods are manufactured at Robinson, Ill., and that as the rate on the raw material from Pittsburgh to Robinson is 20 cents and the rate on rods from Robinson to Tulsa is 47 cents, the Robinson manufacturer must therefore pay 67 cents to lay his rods

down at Tulsa. Notwithstanding the freight rate on bar iron from St. Louis, where complainant buys his raw material, is 6 cents higher than the rate on rods, the witness testified that the adjustment still left him at a disadvantage and claimed that he was unable to meet the local competition at Tulsa. He could offer no explanation of the fact, however, that a Tulsa jobber who buys rods in Robinson and therefore, under the Pittsburgh basing-price system, pays a net freight rate of 67 cents, or 2 cents more than his own rate of 65 cents, can and does actively sell rods in the territory tributary to Tulsa. He testified that the sales of his firm had declined in Oklahoma, and though his testimony directly implies that he believes this decline in his sales to be due to the rate adjustment, he yet admits that it might be due to other causes as, for instance, to the fact that two other supply houses, dealing in rods, have lately been established in Tulsa and Bartlesville, Okla. A witness who is connected with a local firm testified that he shipped manufactured rods from both Toledo and Robinson and is in active competition with complainant.

Competition is apparently keen and the rate on bar iron from St. Louis to Tulsa is a matter of interest not only to the Tulsa manufacturer but also to the outside shipper of manufactured rods who has entered the field. The complainant denies that the trade practice, which for convenience we have termed the Pittsburgh basing-price system, is applicable to iron purchased in markets other than Pittsburgh, although he admits that it governs the prices of steel. Upon the question of its application to iron as distinguished from steel there is positive disagreement between the complainant and the witness, who, representing the Toledo manufacturers, testified in behalf of defendants.

Whether or not the Pittsburgh basing-price system does apply on both iron and steel throughout the territory east of the Mississippi River is not a material issue in this case, but, assuming that it does, it is interesting to note its effect on competition so far as the latter is affected by the freight-rate situation. The result of combining the rates on bar iron from Pittsburgh territory with the rate on rods from the points of shipment most frequently referred to by the parties is shown in the following tables:

Rates in cents per 100 pounds on bar iron and steel in carloads from Pittsburgh, McKeesport, and Oil City, Pa.

	To—			
	Toledo.	Robinson.	St. Louis.	Tulsa.
Bar iron and steel, carloads.....	13	20	22½	54

Rates in cents per 100 pounds on rods in carloads to Tulsa, Okla.

	From—			
	Pittsburgh.	Toledo.	Robinson.	St. Louis.
Rods, carloads.....	56½	52	47	34

It is apparent that if the freight rates from Pittsburgh to points of actual shipment be added to the transportation rate from such points of actual shipment, the Tulsa manufacturer buying iron at St. Louis must pay a net freight rate of 62½ cents on his raw material, and the eastern manufacturers find their freight charges on rods laid down in Tulsa to be as follows:

From—			
Pittsburgh territory.	Toledo.	Robinson.	St. Louis.
56½	65	67	56½

It will be noted from this joinder of the rates that a manufacturer in St. Louis would be on an equality with the Pittsburgh manufacturer in the matter of net freight rates, and that the latter does and the former could lay his rods down in Tulsa at a materially less price than the Tulsa manufacturer must pay on bar iron bought and shipped from St. Louis. Perhaps this rate situation may be the basis of the reported project to remove the Robinson plant to St. Louis. It also appears that the manufacturer shipping rods from Toledo or Robinson is not at any marked disadvantage in competition with the Tulsa manufacturer. Under this system of basing prices it would seem to be the obviously practical thing for complainant to buy his raw material in Pittsburgh territory, from which markets his net freight rate is only 54 cents. The differential in the rate between bar iron and manufactured rods, already noted as applying in favor of rods shipped from St. Louis, Chicago, Peoria, Robinson, and Memphis, is shown to be carried back as far as Toledo, although from the principal iron and steel shipping points in Pittsburgh territory the situation is reversed and a lower rate obtains on the bar iron than on the rods manufactured therefrom.

We have not been greatly aided by the testimony offered on behalf of the defendant, particularly that offered by the representative of the eastern manufacturers. While it is instructive as to the influences which probably have affected the general rate adjustment, its whole trend has been to create a complex situation and to obscure the real issue, and we have adverted to it only because it suggests that

artificial conditions are responsible for the anomalous adjustment of rates. As was said in *Grand Junction Mining & Fuel Co. v. C. M. Ry. Co.*, 16 I. C. C., 452, the Commission can not indulge in speculation as to the motives which actuate carriers in fixing an adjustment of freight rates as between various points of origin.

There is no question here of the complainant seeking to have a natural disadvantage of location equalized in the freight rate. Rods and bar iron, the raw material from which they are manufactured, are competitive in Tulsa. Both may originate in the same markets, and unquestionably a fair and just relation should obtain in fixing the rates for the transportation of the respective articles from the same markets. We are convinced that the rate on bar iron is not only unjustly discriminatory but that the relation of rates in issue is without justification and indefensible.

The reasonableness of the bar-iron rate is dependent of course upon circumstances pertaining to its transportation. The distance from St. Louis to Tulsa via the Missouri, Kansas & Texas Railway is 428 miles and the rate yields 1.87 cents per ton-mile. Via the route of the Frisco and Santa Fe Railways the distance is approximately 475 miles and the rate per ton-mile 1.68 cents. No suggestion is made of any unusual conditions of operation, and we do not understand that there are any. The risk involved in the transportation is negligible. By the rate-per-ton-mile test, distance considered, the 40-cent rate seems high and it is in fact very much higher than the average per-ton-mile rate earned by these roads, all commodities considered. It yields a revenue of \$8 per ton for an average haul of approximately 450 miles, which is greatly in excess of the average receipts per ton of all freight carried. The defendants carry brick and ore to Bartlesville, practically the same distance and under substantially similar circumstances at 12½ cents per 100 pounds in carloads minimum weight 50,000 pounds. To Tulsa, acid phosphate is transported at a rate of 22 cents, minimum carload weight 50,000 pounds; while junk (cullets) is carried at a rate of 15 cents upon a minimum of 40,000 pounds. Soda ash pays 17 cents and stone a rate of 20 cents to Tulsa, minimum weight on each commodity, 50,000 pounds. While the minima on these commodities are somewhat higher, the risk is fully as great if not greater than on bar iron, and the per-car earnings are less. Though we are convinced that the bar-iron rate from St. Louis to Tulsa is unreasonable and unduly discriminatory in itself, we can not, however, in fixing the rate for the future, wholly disregard the adjustment, ill balanced as it seems to be, which obtains in respect of the rates from other points not in issue here and upon which the record throws little light. The proportional rate from Pittsburgh to St. Louis on traffic destined to beyond is 22½ cents, and the through rate

from Pittsburgh to Tulsa 54 cents; 31½ cents accrues west of the river. We shall not reduce the rate from St. Louis to such an extent that the aggregate of the resulting factors to and from the river will make less than the joint through rate from Pittsburgh, the reasonableness of which is not directly in issue, but we are of the opinion, and so find, that a reasonable rate on bar iron from St. Louis to Tulsa should not exceed 31½ cents upon a minimum carload weight of 40,000 pounds.

An order will be entered in accordance with these conclusions.

No. 4283.

LINDSAY & COMPANY, LIMITED,

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted April 29, 1912. Decided December 9, 1912.

Through rate for the transportation of grapefruit from Jacksonville and High Springs, Fla., to Helena, Mont., found to be unreasonable. Reparation awarded.

H. S. Hepner for complainant.

R. B. Scott and Gunn & Rosch for Chicago, Burlington & Quincy Railroad Company.

Charles Donnelly and Gunn & Rosch for Northern Pacific Railway.

J. D. Armstrong and Veazey & Veazey for Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the wholesale fruit and produce business at Helena, Mont. By petition, filed August 1, 1911, it alleges that the charges exacted by defendants for the transportation of grapefruit from certain points in Florida to Helena were unjust and unreasonable. The establishment of a reasonable rate for the future and reparation are asked.

Between October 26, 1909, and May 3, 1911, complainant received at Helena from Buckingham, Fort Meade, Alva, Terra Ceia, Dunedin, Sanford, and Estero, Fla., 12 carloads of grapefruit consisting of 3,672 crates of 80 pounds each, aggregating 293,760 pounds, on which

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charges were collected at destination in the sum of \$6,502.99. An examination of the expense bills discloses that there were overcharges on two of the shipments amounting to \$24.49 and on two others undercharges amounting to \$21 resulting in a net overcharge of \$3.49. The lines east of East St. Louis, Ill., are responsible for both the overcharges and undercharges. The shipments moved via various routes over defendants' lines from Jacksonville, Fla., to destination.

The rate assailed was a combination of intermediate rates from Jacksonville or High Springs, Fla. (Florida basing points), to East St. Louis, Ill., and from East St. Louis to destination. The local rates from points of origin to Jacksonville or High Springs are not herein involved. From February 7, 1910, to May 3, 1910, defendants, with the exception of the Great Northern Railway Company, concurred in a joint rate of \$1.48 per crate on this traffic from Jacksonville to Helena, but it is stated that this rate was published through error, and that there was no arrangement for a division thereof. However, there was a combination rate of \$1.48 in force from March 6, 1909, to April 15, 1910.

Prior to April 15, 1910, the rate from Florida base points to St. Louis, Mo., and East St. Louis was 54 cents per crate. On the latter date the rate to St. Louis was reduced to 50 cents per crate. Effective February 15, 1911, the rate to East St. Louis, in compliance with an order of the Commission in *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co.*, Unreported Opinion No. 418, was also made 50 cents per crate, thereby making the present combination rate from Jacksonville to Helena equivalent to \$1.44 per crate, or \$1.80 per 100 pounds.

It is contended that the charges collected were unreasonable to the extent that they exceeded what would have been charged on a rate of \$1.13 per crate from Jacksonville to Helena plus the local rates from points of origin to Jacksonville.

At the time these shipments moved there was a joint rate of \$1.625, equivalent to \$1.30 per crate, applicable to grapefruit from Jacksonville to Seattle, Wash., and other Pacific coast points. Seattle is about 800 miles farther from Jacksonville than Helena, and traffic moving over the Chicago, Burlington & Quincy Railroad from East St. Louis to Billings, Mont., and thence over the Northern Pacific Railway to Seattle, passes through Helena.

Complainant states that in the division of the joint through rate to Seattle the carriers east of St. Louis receive only 37.5 cents per 100 pounds, or 30 cents per crate, while on traffic from Jacksonville to Helena they exact 50 cents per crate or 62.5 cents per 100 pounds. Complainant further shows that the rate on bananas from Mobile, Ala., and New Orleans, La., is the same to Helena as to Seattle, viz, \$1.25 per 100 pounds. It is averred that Florida grapefruit is a

hardy fruit which withstands shipping better than bananas from southeastern coast points, or oranges from California points, the rates on each of which are uniformly lower than the rate on grapefruit from Florida points. As a further comparison complainant filed the following table showing the rates, distances, and per ton-mile earnings to other points:

From Jacksonville to—	Distance.	Rate per crate.	Revenue per ton- mile.
	<i>Miles.</i>		<i>Cents.</i>
Sault Ste. Marie, Mich.....	1,796	\$0.66	0.917
Duluth, Minn.....	1,801	.66	.87
St. Paul, Minn.....	1,741	.66	.94
Kansas City, via St. Louis.....	1,362	.62	1.14
East St. Louis, Ill.....	1,017	.50	1.22
East St. Louis, Ill.....	1,017	.30	.59
Seattle, Wash.....	3,343	1.30	.972
Jamestown, N. Dak.....	2,084	.956	1.147
Bismarck, N. Dak.....	2,186	1.068	1.22
Denver, Colo.....	1,949	1.00	1.28
Chicago, Ill.....	1,310	.53	.8
Cincinnati, Ohio.....	.995	.46	.98
Cleveland, Ohio.....	1,258	.53	.84
Detroit, Mich.....	1,271	.53	.834

¹ Based on proportion of through rate accruing to lines east of East St. Louis in rate of \$1.30 per crate Jacksonville to Seattle, Wash.

The distances shown in the above table are found upon examination to be in excess of the short-line mileage on the basis of which the revenue per ton-mile would be greater in each instance.

The carriers west of East St. Louis explain the rate of \$1.625 per 100 pounds from Jacksonville to Seattle on the ground that it meets competition with California grapefruit moving by water to Pacific coast terminals. They state that the rate of \$1.175 per 100 pounds from East St. Louis to Helena is 94 per cent of \$1.25, their proportion of the joint rate from Jacksonville to Seattle, whereas the Commission in *City of Spokane v. N. P. Ry. Co.*, 21 I. C. C. 400, held that the rates to intermediate points from Mississippi River territory might be 107 per cent of Pacific coast rates.

To show that rates to Seattle are influenced by competition, and to compare the rate from East St. Louis to Helena with the rates from California points to Helena, defendants make the following comparisons:

From—	To—	Distance.	Rates per cwt.
		<i>Miles.</i>	<i>Cents.</i>
Los Angeles.....	Seattle.....	1,312	66
Do.....	Portland.....	1,123	65
Do.....	Helena.....	1,266	115
Redlands.....	do.....	1,290	115
East St. Louis.....	do.....	1,550	117.5

Complainant compared the rate from Jacksonville to East St. Louis with the division received by the carriers east of East St. Louis in the joint rate on this traffic from Jacksonville to Seattle, but the proportions received by carriers in the division of joint rates afford little basis upon which to determine the reasonableness of a rate.

The rates on grapefruit from Jacksonville, when from beyond, to Ohio and Mississippi River crossings are as follows:

To—	Per crate of 80 pounds.
	Cents.
Cincinnati, Ohio.....	46
Louisville, Ky.....	46
Memphis, Tenn.....	42
New Orleans, La.....	30
East St. Louis, Ill.....	50

The following is an extract from a letter addressed to its counsel, under date of February 15, 1912, by the freight traffic manager of the Atlantic Coast Line Railroad Company and filed in the record relative to a conference had between the representatives of the southeastern lines as to the divisions of the rates ordered by the Commission in *Florida Fruit & Vegetable Shippers' Protective Asso. v. A. C. L. R. R. Co., supra*:

The initial lines are willing to accept up to the crossings on business going to Helena and other Montana points the same proportions as we accept in dividing the reduced rates ordered by Commissioner Prouty. We handled this question, therefore, with the southeastern lines at a recent meeting, and in order to furnish a basis for making rates to Montana points the following proportional rates were established on citrus fruits, usual description and carload minimum, from Florida base points, when from beyond, to Ohio and Mississippi River crossings, when for points in the state of Montana.

	Per box of 80 pounds.
	Cents.
Ohio River crossings.....	40
Memphis, Tenn.....	36.5
East St. Louis, Ill.....	46.5

There are no specifically published through rates in effect at the present time from Florida base points to Helena, Mont., but the proportional rates above named were fixed for the purpose of making other rates to that territory.

We have examined the tariffs on file with the Commission and fail to find that the proportional rates above referred to have been established.

Upon the record we are of opinion and find that the through rate on grapefruit from Jacksonville and High Springs, when from beyond,
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to Helena, should not exceed \$1.625 per 100 pounds. The Commission will not undertake at this time to establish the divisions of this rate but will leave it to the carriers to adjust. Should they fail to reach an agreement the matter will be considered and decided.

We further find that complainant made the shipments in accordance with the foregoing statement of facts and paid charges thereon at the rate herein found to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable; and that it is, therefore, entitled to an award of reparation against the defendants participating in the movement of this traffic, in the sum of \$616.36 (which includes the overcharge above mentioned), with interest from May 10, 1911. An order will be entered accordingly.

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No. 4157.

ARABOL MANUFACTURING COMPANY
v.
SOUTH BROOKLYN RAILWAY COMPANY ET AL.

Submitted October 4, 1911. Decided December 9, 1912.

Joint rates for the transportation of seventeen carloads of sizing from Bedford, N. Y., via Weehawken, N. J., to Carthage and other New York points found to have been unreasonable to the extent that they exceeded the aggregate of the intermediate rates. Reparation awarded.

G. W. Darling for complainant.

A. R. Piper for South Brooklyn Railway Company.

Jacob Aronson for New York Central & Hudson River Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation engaged in the manufacture of pastes, glues, starches, and sizings in the borough of Brooklyn, N. Y., filed its petition and amendment thereto June 7 and August 4, 1911, respectively, alleging that it was charged unreasonable rates for the transportation of certain carloads of sizing from Bedford, N. Y., to the several points hereinafter mentioned. Reparation is sought.

On June 30, 1909, and on various dates thereafter, to and including November 6, 1909, complainant shipped over defendants' lines from Bedford, N. Y., via Weehawken, N. J., to the several points named below 17 carloads of sizing, as follows: To Carthage, Brownville, and Port Leyden, N. Y., nine carloads, of the aggregate weight of 410,239 pounds, for which transportation charges were collected by defendants at a rate of 18 cents per 100 pounds, amounting to the sum of \$738.44; to Watertown, N. Y., two carloads, of the combined weight of 90,303 pounds, for which transportation charges were collected by defendants at a rate of 20 cents per 100 pounds, amounting to the sum of \$180.61; to Canton, N. Y., three carloads, of the aggregate weight of 136,472 pounds, for which transportation charges were collected by defendants at a rate of 19 cents per 100 pounds, amounting to the sum of \$259.31; and one carload, of the weight of 45,068 pounds, for which transportation charges were collected by defendants at a rate of 20 cents per 100 pounds, amounting to the sum of

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\$90.14; to Gouverneur and Malone, N. Y., one carload each, of the combined weight of 89,535 pounds, for which transportation charges were collected by defendants at a rate of 19 cents per 100 pounds, amounting to the sum of \$170.10.

The rates applied were the published through rates in force at the time, except as to the shipments to Watertown, on which the through rate was 18 cents instead of 20 cents as charged, and one of the shipments to Canton, of the weight of 45,221 pounds, as to which the rate was 20 cents instead of 19 cents as charged. There was therefore an overcharge on the Watertown shipments of \$18.06, and an undercharge on the Canton shipment of \$4.51, or a net overcharge of \$18.55 on the shipments as a whole.

During the period covered by the shipments there were published intermediate rates on the traffic from and to the points involved, the combinations of which were less than the through rates charged. They consisted of a rate of 53 cents per ton, or 2.65 cents per 100 pounds, from Bedford to Bush Docks Junction, N. Y., and rates beyond to the several destination points, as follows: 13 cents per 100 pounds to Carthage, Brownville, Watertown, and Port Leyden; 14 cents per 100 pounds to Canton and Malone; and 13½ cents per 100 pounds to Gouverneur. The tariff naming the rate of 53 cents per ton from Bedford to Bush Docks Junction contains a general provision to the effect that rates named therein shall apply on shipments moving to or from Bush Docks Junction, Bush Terminal Company, and connections beyond, only when no through published rates are in effect. The combinations of intermediate rates made 15.65 cents to Carthage, Brownville, Watertown, and Port Leyden; 16.65 cents to Canton and Malone; and 16.15 cents to Gouverneur. Complainant contends that the charges were unreasonable to the extent that they exceeded such combinations.

By tariff effective December 16, 1909, defendants reduced the joint through rates from Bedford to the several destination points to levels slightly lower than the combinations of intermediate rates, as follows: To Carthage, Brownville, Watertown, and Port Leyden, 15 cents per 100 pounds; to Canton and Malone, 16 cents per 100 pounds; and to Gouverneur, 15½ cents per 100 pounds. These rates are now in force.

Defendants' contention is, in substance, that the tariff provision authorizing the application of the rate of 53 cents per ton to shipments for beyond Bush Docks Junction only in the absence of through published rates, has the effect to take the case without the provision of the fourth section, which forbids carriers to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the act. This contention is unsound. It

implies that but for the provision referred to the combinations of intermediate rates might have been lawfully applied to the shipments notwithstanding the published through rates, whereas the contrary is true. The joint through rates would have been the rates lawfully applicable under the tariffs in the absence of a provision like the one in question, and the principle involved therefor is the same as though the tariff had contained no such provision.

We are of opinion and find that the rates charged were unreasonable to the extent that they exceeded the combinations of intermediate rates relied on by complainant. We further find that complainant made the shipments in accordance with the foregoing statements of facts and paid charges thereon as set forth; that it has been damaged in so far as said charges exceeded the amount that would have been collected on the basis found reasonable, and reparation will therefore be awarded as follows: On the shipments to Carthage, Brownville, Watertown, and Port Leyden, in the sum of \$135.70, with interest from December 1, 1909, which includes the overcharge referred to; on the shipments to Canton and Malone, in the sum of \$57.69, with interest from said date; and on the shipment to Gouverneur, in the sum of \$12.76, with interest from said date. An order will be entered accordingly.

25 I. C. C.

No. 4446.
FORD MANUFACTURING COMPANY
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted April 26, 1912. Decided December 2, 1912.

Rate of 22½ cents per 100 pounds for the transportation of roofing paper from Vandalia, Ill., to Toronto, Canada, not found to be unreasonable. Complaint dismissed.

B. F. Fuller for complainant.

A. P. Humburg for Illinois Central Railroad Company.

G. W. Kretzinger, jr., for Grand Trunk Western Railway Company and Grand Trunk Railway Company of Canada.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in manufacturing roofing papers at Vandalia, Ill. By petition, filed September 27, 1911, it alleges that the rate of 22½ cents per 100 pounds charged by defendants for the transportation of roofing paper from Vandalia to Toronto, Canada, is unjust and unreasonable. Reparation is asked.

On June 14, 1911, and July 14, 1911, complainant shipped over the lines of defendants from Vandalia to Toronto two carloads of roofing paper aggregating 61,800 pounds, on which charges were collected in the sum of \$139.05, at the rate of 22½ cents per 100 pounds. Complainant alleges that the rate charged is unreasonable to the extent that it exceeds 15½ cents, which is the rate on roofing paper from Vandalia to Buffalo, N. Y. It is contended that the class rates in official classification territory being the same to Toronto as they are to Buffalo, and the distance from Vandalia to Toronto approximately the same as from Vandalia to Buffalo, the rate should be the same.

The 22½-cent rate to Toronto is the fifth-class rate, while the 15½-cent rate to Buffalo is a commodity rate, being 83½ per cent of the sixth-class rate. From Vandalia to Toronto there are two routes via the Illinois Central Railroad, one via Harvey, Ill., or Chicago, Ill., thence via Grand Trunk system through Port Huron, Mich., the other via Chicago or Tolono, Ill., in connection with the Wabash Railroad,

Canadian Pacific Railway and Grand Trunk system. By the former route the distance is 695 miles, via the latter 672 miles. There are eight trunk lines leading from Chicago to Buffalo via all of which the Illinois Central Railroad Company applies its through rate from Vandalia. The short line distance from Vandalia to Buffalo is 636.5 miles. The rate basis from Vandalia to Buffalo, 83½ per cent of sixth class, prevails throughout central freight association territory west of Buffalo and Pittsburgh, Pa., on and east of the Mississippi River and north of the Ohio River, but not in Canada or to or from Canada. Defendants assert this basis became effective from Vandalia October 1, 1909, and that it was brought about by competition within the United States. It is said that there were certain commodity rates from Lockport, N. Y., to points in central freight association territory less than sixth class, which first brought about a reduction in the rates from Erie, Pa., followed by a reduction in the rates from the Miami Valley, Carlyle, East St. Louis, and Vandalia, Ill., and other producing points within central freight association territory. Defendants contend that in competition with the shorter and more direct lines operating through the United States south of Lake Erie they were compelled to meet the rate to Buffalo.

The present fifth-class rate to Toronto has been in effect for many years. The combined earnings of the three defendants on this traffic amount to 6.5 mills per ton per mile.

Complainant testified that its competitors were located at Chicago, Ill., Erie, Pa., Lockport and Tonawanda, N. Y., and points in the vicinity of Boston, Mass., and New York City. It is stated of record that no manufacturer of roofing paper in the United States can ship into Canada at less than the fifth-class rate.

From an examination of all the facts and circumstances, we are unable to find that the rate in question is unreasonable, and an order will be entered dismissing the complaint.

25 L. C. C.

No. 4522.

RIVERSIDE MILLS

v.

GEORGIA RAILROAD ET AL.

Submitted June 19, 1912. Decided December 9, 1912.

1. Charges collected for the transportation of two shipments of cotton-factory sweepings from Augusta, Ga., to Lockland, Ohio, found to have been unreasonable. Reparation awarded.
2. Carload minimum weights should be established with reference to the loading capacity of the car. If carriers desire to protect themselves from unduly low charges per car, they should do so by regulating the rate, and not by prescribing minimum weights which can only be loaded in cars of unusual size.
3. It is incumbent upon carriers to furnish cars that will ordinarily contain the minimum weight which they have established, or to publish a rule that will provide for charging shippers on that basis, when unable to furnish such cars.

R. J. Southall for complainant.

R. Walton Moore and *M. P. Callaway* for Georgia Railroad; Western & Atlantic Railroad; Nashville, Chattanooga & St. Louis Railway; and Cincinnati, New Orleans & Texas Pacific Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged at Augusta, Ga., in the manufacture of cotton goods. By petition, filed October 30, 1911, it is alleged that unreasonable charges were collected by defendants for the transportation of two shipments of cotton-factory sweepings from Augusta, Ga., to Lockland, Ohio. Reparation is asked.

On January 25 and 26, 1911, complainant made shipments of 200 and 100 bales, respectively, of cotton-factory sweepings, from Augusta to Lockland. The first shipment was loaded in five cars, and the second in three cars. The aggregate weight of the shipments was 165,204 pounds, and charges in the sum of \$420.94 were collected based upon a rate of 20 cents per 100 pounds. The tariff named a minimum weight of 30,000 pounds, applicable to cars of any size, and was governed by southern classification, which provided as follows:

The first car and all succeeding cars, except the last, must be fully loaded and charged for on basis of carload rate and at actual weight, but at not less than the established minimum weight per car, according to length, for each car used.

The remainder of the consignment, if loaded in one box car, shall be charged for at actual weight and at carload rate.

In accordance with the above rule the minimum weight of 30,000 pounds was applied on each car used, except that on the last car of each shipment actual weight was charged for.

Complainant alleges that 50-foot cars were ordered, and contends that the charges assessed were unreasonable to the extent that they exceeded charges that would have accrued had 50-foot cars been furnished.

The evidence shows that in pursuance of complainant's usual custom, orders were placed in one case for four 50-foot or five 36-foot cars, and in the other for two 50-foot or three 36-foot cars. Orders couched in such terms can not be regarded as orders for cars of specific size or dimensions but afford carriers the alternative of supplying either one size or the other. In these instances, defendants, finding it impracticable to furnish the smaller number of large cars met the alternative requirement and filled the order with the larger number of smaller cars.

This is not a case which involves the application of the rule laid down in several previous cases, where a large car was ordered and two smaller ones furnished in lieu thereof, and where we held that carriers should protect shippers on the basis of the minimum weight applicable to the car ordered. Our decisions in those cases were predicated upon the fact that the carriers' tariffs provided varying minima, according to size of car, whereby they held themselves out as prepared to furnish cars of various sizes and apply charges based upon the size of car desired by the shipper, thus conferring upon the shipper a legal right to demand a car of certain size and to have charges assessed accordingly. As above stated the minimum weight in this case was applicable to cars of any size.

However, we have heretofore held that ordinarily carload minimum weights should be established with reference to the loading capacity of the car. If carriers desire to protect themselves from unduly low charges per car they should do so by regulating the rate and not by prescribing arbitrary minimum weights which can only be loaded in cars of unusual size. It appears that the initial carrier was aware of the fact that 50-foot cars were required to accommodate the minimum weight of 30,000 pounds on the commodity in question, and having voluntarily established that minimum, irrespective of the size of car ordered by the shipper it was incumbent upon defendants to furnish equipment into which the minimum weight could ordinarily be loaded.

The question of the reasonableness of the minimum weight is not directly involved, but it is evident that the cause of complaints of this nature can be removed by defendants establishing a rule that will in all cases protect shippers in case it is impossible to furnish cars of sufficient size to accommodate the prescribed minimum

weight, or by prescribing a graduated scale of minimum weights, based upon the loading capacities of cars of various sizes. Under the present basis a shipper can not definitely determine in advance of shipment what the freight charges will be, and it is also productive of discrimination, for the carrier may at one time or for one shipper be able to furnish equipment capable of holding the prescribed minimum weight and in other cases find it impossible to accommodate shippers with cars of sufficient size.

Upon consideration of all the facts and circumstances, we are of the opinion and find that the charges collected for the transportation of complainant's shipments were unreasonable to the extent that they exceeded charges that would have accrued had defendants furnished cars of sufficient size to accommodate the minimum weight of 30,000 pounds.

We further find that complainant made the shipments and paid charges thereon in accordance with the foregoing statement of facts; that it has been damaged to the extent of the difference between the amounts which it did pay and the amounts which it would have paid had cars been furnished into which the prescribed minimum weight could have been loaded; and that it is therefore entitled an award of reparation in the sum of \$90.53, with interest from August 28, 1911. In the expectancy that defendants will at once provide tariff regulations that will remedy the present situation no order respecting the future will be entered at this time. An order will be entered in accordance with the conclusions herein announced.

25 I. C. C.

No. 4339.
CHARLES R. BALL LUMBER COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL.

Submitted November 10, 1911. Decided December 2, 1912.

Charges for the transportation of lumber and crossties from points in Louisiana to Acme, Tex., found to have been unreasonable. Reparation awarded.

Emerson Bentley for complainant.

F. M. Williams for Texas & Pacific Railway Company and Fort Worth & Denver City Railway Company.

Charles H. Sommer for Quanah, Acme & Pacific Railway Company.

J. D. Wilkinson for Mansfield Railway & Transportation Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation, with place of business at Shreveport, La., and is engaged in buying and selling lumber and crossties. By petition, filed August 24, 1911, it alleges that unreasonable rates were charged by defendants for the transportation of 30 cars of pine lumber and crossties moving during the period from June to October, 1909, from points in Louisiana west of Alexandria to Acme, Tex. Reparation is asked. The claim was first filed with the Commission May 31, 1911.

During the period named the complainant forwarded from various points in Louisiana, over the lines of defendants, to Acme, 30 carloads of pine lumber and crossties, for the transportation of which the defendants collected charges in the aggregate sum of \$4,466.19, based on a rate of 27½ cents per 100 pounds. This rate was made up of 22½ cents from the several points of origin to Quanah, Tex., and 5 cents, Quanah to Acme. The shipments were routed by complainant, or by its direction, via "Fort Worth, Ft. W. & D. C. & Q. A. & P. at Quanah." The route of movement was via the Texas & Pacific Railway to Fort Worth; Fort Worth & Denver City Railway to Quanah; and Quanah, Acme & Pacific Railway to Acme. At the same time there was in effect via the line of the Texas & Pacific and Fort Worth & Denver City railways from all points of origin to

Acme a rate of 21½ cents, except from Mansfield, La., where one of the shipments originated, from which point the rate was 22½ cents. The load shipped from Mansfield weighed 42,200 pounds; the other 29 cars weighed in the aggregate 1,581,820 pounds.

The shipments were all consigned to the Pacific Construction Company, and the record establishes that the lumber was designed for construction work on an extension of the Quanah, Acme & Pacific and that it was on the request of the latter company that the shipments were routed by complainant. While this company appears as the terminal or delivering carrier, the haul from Quanah to Acme was in fact over the rails of the Fort Worth & Denver City, with which company the Quanah, Acme & Pacific had a trackage agreement.

We have frequently held that a shipper is bound by his routing instructions and that merely because there was a route over which he might have sent his shipment at a lower rate he has not been subjected to unreasonable charges. This principle controls in all cases where no showing is made that the rate applicable over the route of movement was unreasonable. In this case complainant alleges, defendants admit, and the evidence establishes that the rate charged on the shipments was unreasonable. The shipments moved from points of origin to destination over precisely the same rails they would have moved over had complainant tendered them unrouted or directed Fort Worth & Denver City delivery instead of Quanah, Acme & Pacific delivery. After the shipments moved the 21½-cent rate was made effective whereby delivery could be made at Acme by either carrier. The evidence further shows that complainant paid the higher charge inasmuch as the freight charges were deducted from its invoices to the purchaser.

Under all the circumstances of this case, we are of opinion and find that the rate charged on the shipments in question was unreasonable to the extent that it exceeded 21½ cents from all points of origin except Mansfield, La., and that the rate from the latter point was unreasonable to the extent it exceeded 22½ cents. We further find that complainant made the shipments in accordance with the foregoing statement of facts and paid charges thereon at the rates found herein to have been unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount it would have paid at the rates herein found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$988.64, with interest from November 1, 1909, on shipments from points of origin other than Mansfield, and in the sum of \$21.11, with interest from September 1, 1909, on the shipment from Mansfield. As the lower rate has been in effect for two years, no order for the future will be entered.

No. 4541.
BENISCH BROTHERS
v.
LONG ISLAND RAILROAD COMPANY.

Submitted May 10, 1912. Decided December 2, 1912.

Defendant has a hand derrick at its Atkins yards, East New York, for unloading heavy freight, that is not of sufficient capacity to unload all the heavy freight received there within 48 hours of arrival. Collection of demurrage and track-storage charges on heavy freight which was delayed in unloading beyond that time, under such circumstances, found unreasonable. Reparation awarded.

H. L. Davis for complainants.

J. F. Keany for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants are engaged in the granite and stone business at East New York, Brooklyn, N. Y. By petition, filed November 3, 1911, they allege that defendant unjustly and unreasonably collected the sum of \$1 for demurrage and \$1 for track storage on a carload of granite which was shipped from Barre, Vt., to East New York about July 1, 1910.

Most of complainants' shipments of granite come by water from an island off the coast of Maine and are received by defendant at its rail ends at Long Island City, N. Y., where the stone is loaded upon cars and hauled to its Atkins yard in East New York. Such shipments as do not move by water come by rail from points of origin in other states and are delivered at the same yard. The Long Island Railroad Company owns no flat cars that can be used for this traffic, and unless flat cars belonging to other companies are available the granite shipments are loaded into gondola cars, which can not be unloaded without the use of a derrick. The blocks of stone weigh several tons each and require equipment suitable for unloading heavy weights. Defendant has a hand-power derrick at its Atkins yard which is used by all receivers of heavy freight at that point, including complainants. It frequently happens that the demand for the use of the derrick by shippers is so great that it is impossible to unload all cars of heavy freight within 48 hours of their arrival, and demurrage and track-storage charges are assessed against those that must wait beyond that period.

This complaint was brought to test the reasonableness of demurrage and track-storage charges on cars that are delayed in unloading under such circumstances. Complainants allege that the inadequacy of the unloading facilities at the Atkins yard has been frequently brought to the attention of defendant by them, but no effort has been made to improve the conditions. Complainants have offered to erect and maintain their own derrick, if a suitable location in the yard is granted them, adjacent to a paved roadway.

The attitude of the railroad company as expressed at the hearing was that a derrick is a "luxury" to be supplied or withheld at a particular point at the will of the carrier, and that if a derrick is furnished at a station receivers of freight must take their chances on being able to unload heavy shipments with its aid during the free time and that no additional free time for cars delayed by inadequacy of this character of equipment should be granted.

The car containing the shipment in question arrived in the Atkins yard on July 25, 1910, at a time when many cars of heavy freight were there waiting to be unloaded, and although it is a type of car that might be unloaded without the use of a derrick, it was so placed on the track that its lading could not be removed without suspending the unloading of other cars at the derrick. It was not unloaded during the free time, and after the expiration of that period was placed and unloaded with the derrick and released July 29. It was under these circumstances that charges of \$2 for demurrage and \$2 for track storage were imposed. Complainants ask for the return of the demurrage and track-storage charges collected for one day, or \$2.

It is clearly shown that one hand derrick is not sufficient for the business at the Atkins yard, and that this caused the delay which resulted in the assessment of the demurrage complained of.

Defendant has provided the derrick and it has become a facility for the delivery of shipments. All receivers of shipments at that point for which the derrick is necessary in unloading have the right to use it without discrimination. The receiver can not use the derrick except when defendant places his car where he can reach it with the derrick. The receiver whose car has not been so placed and who is ready to unload it when it is placed is not responsible for the fact that others are using the derrick or that the cars of others are so placed by defendant that he can not unload his car. We do not think that the derrick is a luxury. But even if it were the receiver can not be penalized for not using it when defendant and other receivers make it impossible for him to use it.

It is our conclusion that the car in question was not placed for unloading until it was placed adjacent to the derrick and that the assessment of demurrage and track storage charges prior to such placement was unjust and unreasonable. Defendant will be required

to cease and desist from assessing charges upon shipments of stone of the character herein involved until the free time has expired after the placement of said shipments adjacent to the derrick provided for unloading such shipments. It may be that the free time allowed after the car is placed at the derrick ought to be shorter than that ordinarily allowed for unloading. The facilities are limited and full efficiency should be secured therefrom.

We further find that complainants paid the demurrage and track storage charges in accordance with the foregoing statement of facts and have been damaged to the extent of the charges so collected for one day, and are therefore entitled to an award of reparation in the sum of \$2, with interest thereon from the 16th day of August, 1910.

An order will be issued in accordance with these findings.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 76.
IN THE MATTER OF THE SUSPENSION OF WESTERN
CLASSIFICATION NO. 51, I. C. C. NO. 9.

Submitted October 17, 1912. Decided December 9, 1912.

1. Western classification No. 51, I. C. C. No. 9, was filed December 28, 1911, to become effective February 15, 1912, and was suspended by the Commission, pending this investigation, until December 14, 1912. Carriers voluntarily extended this suspension until February 14, 1913.
2. After discussing some of the larger and more fundamental general questions involved in this proceeding, consideration is given the individual rules in controversy, and this is followed by a discussion of the individual items in No. 51, to which objections have been raised. In connection with the discussion of both rules and items the application of the general principles involved is given additional consideration. Attention can be directed, in these headnotes, only in a general way, to a few of the most important considerations.
3. Classification is a public function. Public business can not be conducted in a private way. Hearings of classification committees should be made public, after due notice to interested parties, including state commissions and the Interstate Commerce Commission. A record of facts and arguments should be made. As rapidly as items, or groups of items, have been disposed of by the classification committee they should be published in accordance with law. In the case of a protest to this Commission, the record made up before the committee should be promptly submitted to the Commission. On the basis of this record, supplemented when necessary by additional inquiries, the Commission will be able to decide whether or not to suspend a proposed change in classification.
4. A compilation of classification units, expressing the relation to one another of weight, space, and value, should be made, as far as practicable, for every item in the classification, and given due consideration.
5. The work of classification should be confined to classification as such, entirely separate from the question of rates or revenues of carriers. Classification and rates and revenues should be treated separately. Having completed a new classification along the lines suggested, each carrier can readjust its rates on the basis of that classification in such manner as to preserve its existing revenues. The sufficiency or insufficiency of certain revenues and the level of particular rates or schedules are separate questions. A classification is a universal tariff from which the schedules of individual carriers should not depart, except in cases demanded by special conditions. Commodity tariffs in restricted number may always remain a necessity.

6. The classification movement since 1887, with a brief reference to conditions prior to that date, is described and mention made of the uniform classification of 1891.
7. The Commission has repeatedly emphasized the necessity of greater uniformity in classification. Numerous quotations, bearing upon this subject, from decisions and annual reports of the Commission are given. Reference is made to the past utterances of the Commission with regard to the elements of classification, an enumeration of which is made.
8. Generally speaking carload ratings should be established whenever carload quantities are offered for shipment and the public interest requires it. The relative merits of a system of any-quantity ratings as compared with a system of carload and less-than-carload ratings left for future consideration.
9. Liberal provisions should be made for mixtures. Artificial restrictions upon mixtures are restrictions upon the freedom of trade and commerce, with a tendency to militate against the small man. Mixtures result in a better utilization of car space; they lessen the demands upon terminal properties, they decrease the expense of operation, and facilitate the movement of freight. A brief statement is made of the arguments for and against the incorporation in western classification of rule 10 of official classification.
10. An excessive difference between the carload and less-than-carload rates on the same commodity results in an undue preference to the carload shipper. Considerable diversity in the spread between carload and less-than-carload ratings is revealed. The relations between carload and less-than-carload ratings should be established in accordance with some consistent principle throughout the classification and the rate schedules which may be constructed upon it. In establishing a proper relation, consideration should be given to the relative cost of handling, the demands upon terminal properties, and the utilization of equipment.
11. Generally speaking, freight cars should be made to fit the business. Within reasonable limits business may be required to adapt itself to the car.
12. Carriers should take into consideration both the physical minimum and the commercial minimum in deciding upon a classification minimum to govern carload shipments throughout the country and provide themselves with cars of corresponding sizes. What these shall be must be determined in the light of all the facts applicable to each individual case. The physical minimum is that minimum which represents the weight or bulk quantities which can be loaded into a car from the point of view of space or the theoretical number of packages capable of being loaded into a car, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, possibly with some consideration of the dimensions of the package. The commercial minimum is that minimum which represents the unit of purchase and sale of the commodity in question as established by custom and the conditions existing in that trade and in the territory in which it governs at the time the minimum was established. The physical minimum would consider only physical loading capacity, while the commercial minimum would consider in addition trade requirements, conditions of manufacture, distribution, and consumption.
13. From a classification standpoint, the security of a package may with propriety be considered in fixing the rating. A package which is less desirable from a transportation standpoint may be given a higher rating than one which is more desirable. The approval of this rule, however,

does not sanction disproportionate and arbitrary increases in the rating of an article when offered in a less desirable package. There should be some relation between the increased rating and the increase in the risk, difficulty of handling, and other proper considerations.

14. In the present proceeding the discussion bearing upon a graduate scale has centered about rule 6-B. The principle of this rule is correct. It promotes economical use of car space and has a tendency to check the careless shipper. The restriction of the present rule to light and bulky articles is of doubtful propriety. On the other hand, a universal graduate scale probably can not be devised. The loading possibilities of different commodities vary so widely in their relation to differing car dimensions that it may be necessary to adopt different scales for different classes of commodities.
15. The rule in *Southern Cotton Oil Co. v. S. Ry. Co.*, 19 I. C. C., 79, approved. It is the duty of the initial carrier not only to advise the shipper of the lower rates applying in case of release of valuation, but when informed of the shipper's desire to avail himself of such lower rates to obtain the shipper's signature in accordance with the tariffs.
16. "Follow-lot" shipments should be marked by the shipper whenever they constitute an overflow resulting from the failure of the shipper to designate the dimensions of cars required. Where the shipment could be loaded in a car of the size ordered by the shipper and two cars are furnished by the carrier, the marking, where necessary, should be done by the carrier.
17. It is the duty of the delivering carrier to collect the lawful rates on shipments and to correct any errors that may have been made by the agents of the initial carrier in billing or in the collection of prepaid charges. This includes misbilling due to a wrong description of the container. A provision should be inserted that, if the classification of a shipment is properly raised at the point of destination, by reason of the character of the container, the initial carrier shall be liable for the difference, unless misrepresentation was made.
18. Every effort of the carriers to compel accuracy and honesty in descriptions of freight deserves support. Inadvertent and unknowing misdescriptions are unfortunate in their possible discriminatory effect; conscious misrepresentations and misdescriptions are criminal and should be rigorously suppressed.
19. It is the right and duty of carriers to protect other freight from commodities which are likely to damage it. Certain perishable freight may at times, for sufficient reason, be refused under proper tariff provision or the classification.
20. If all the pieces constituting a completed article are offered as one shipment, under one bill of lading, the freight charge should be calculated upon a rating for the completed article. This does not prevent a shipper from billing separately each constituent part at its respective rating.
21. Carload quantities should not be received in freight houses. Storage space should be reserved for less-than-carload shipments. But when, for sufficient reason, a carrier has actually stored and handled carload quantities as it stores and handles less-than-carload quantities it is entitled to fair compensation for the additional service performed.
22. *Brunswick-Balke-Collender Co. v. A., T. & S. F. Ry. Co.*, 23 I. C. C., 395, affirmed, subject to the further investigation ordered in that case.

25 I. C. C.

23. By requiring a substantial minimum to be loaded of each commodity in the mixture it would become impossible to defeat the minimum weight requirements of the others by including in the shipment a nominal quantity of one. Such provision should be inserted in rule 21-B.
24. It would hardly be in the public interest to require carriers to load or unload large, heavy, bulky less-than-carload shipments at any one of the thousands of stations in this country where they do not, and can not, maintain crews capable of handling consignments of this character. Carriers should advise shippers at the time shipments are received what is expected of them. This rule, like all others, must have a reasonable interpretation. Section crews should assist shippers wherever possible and practicable.
25. "Shippers' load and count." In connection with this subject a discussion is given of carriers' liability under ordinary bills of lading and those containing similar qualifying clauses. As this subject is covered by pending legislation of Congress fixing the liability of the carriers, the Commission refrains from making recommendations.
26. The allowance of 500 pounds for "dunnage" should be continued.
27. The classification should either provide for the transportation of a necessary caretaker of perishable freight free of charge or require carriers to take care of stoves and replenish fuel in transit when such protection is required.
28. While carriers may provide by definite tariff provisions, free from undue discrimination, for the advancement of storage or transfer charges, the Commission is without authority to compel them to do so.
29. In accordance with established law, classification properly may not be predicated upon the use to be made of an article. Use may, however, be considered as evidence of value. Value has a bearing upon rating in the classification.
30. The restriction of the mixture of machinery and machines to articles "necessary for the initial equipment" is unjustly discriminatory. If it is found necessary to restrict the mixture, this should be done by placing a limitation upon the quantity of each article that may be shipped in a mixed car.
31. In connection with the sliding scale of minima provided by rule 6-B, rules protecting the minimum on the size of car ordered, similar to those in effect in western trunk line exceptions to the classification, and in accord with our decision in *Noble v. B. & O. R. R. Co.*, 22 I. C. C., 432, should be incorporated in western classification.
32. In instances where it is difficult to secure the actual weight of articles shipped, estimated weights per unit may be used. The standard weights per unit must be fair and should be the result of careful investigation. The simplicity and ease of determination under this system are commendable.
33. Individual items considered in this report are so numerous and varied that no reference can be made to them in the headnotes.
34. It is expected that carriers will revise No. 51 and direct the future development of classification in accordance with the views expressed in this report.

John M. Jones and *Frank Lyon* for Interstate Commerce Commission.

W. M. Barrow for Railroad Commission of Louisiana and Louisiana jobbers.

A. D. Beals and Ben L. Jacobsen for Board of Railroad Commissioners of Iowa.

Henry T. Clarke, jr., for Nebraska State Railway Commission.

Halford Erickson for Wisconsin Railroad Commission.

George A. Henshaw and C. B. Bee for Corporation Commission of Oklahoma.

Royal C. Johnson, B. W. Dougherty, Geo. Rice, and F. C. Robinson for Board of Railroad Commissioners of South Dakota.

J. A. Little and W. H. Stutsman for Board of Railroad Commissioners of North Dakota.

H. D. Loveland for California Railroad Commission.

C. B. Aitchison for Railroad Commission of Oregon.

John Marshall, George Plumb, John T. White, E. H. Hogueland, and E. E. Smythe for Public Utilities Commission of Kansas.

Ira B. Mills for Minnesota Railroad & Warehouse Commission and Minnesota shippers.

Clifford Thorne for Board of Railroad Commissioners of Iowa and other states.

Thos. L. Wolf for Railroad & Warehouse Commission of Illinois.

F. H. Armstrong for Reid Murdock & Company and Wholesale Grocers' Exchange, Chicago.

Chas. K. Arter for American Multigraph Company.

George T. Atkins, jr., for Shreveport Chamber of Commerce.

John H. Atwood and H. G. Wilson for various commercial organizations throughout the country.

C. A. Banister for the Moline Plow Company.

H. C. Barlow for Chicago Association of Commerce.

S. C. Bates for Springfield Traffic Bureau.

Geo. T. Bell for Traffic Bureau of Commercial Club of Sioux City, Iowa.

J. M. Belleville for Pittsburgh Plate Glass Company and National Industrial Traffic League.

G. J. Bradley for Merchants & Manufacturers Traffic Association.

Leonard Brisley for Pence Auto Company, United Motor Supply Company, and O. Fenstermacher.

A. F. Clothier for Lindsay Brothers.

P. W. Coyle for St. Louis Business Men's League.

B. D. Crane for Arkansas Wholesale Grocers Association.

James A. Dick for El Paso Wholesale Grocers.

J. C. Dillard for Four States Traffic League and Waco Freight Bureau.

F. Dillen for Dillen & Boney.

S. O. Dodson for North Dakota Wholesale Grocers Association.

E. H. Draper for Western Grocer Company of Iowa.

Charles D. Drayton for J. C. Blair Company and others.

H. C. Driscoll for Topeka Traffic Association.

W. J. Evans for National Implement & Vehicle Association.

C. O. Follett for Fargo Commercial Club.

F. P. Gregson for Associated Jobbers of Los Angeles.

G. Roy Hall for Commercial Club of Duluth.

J. C. Harpham for Harpham Brothers Company.

Robert S. Hart for American Writing Paper Company.

Frank M. Hill for Fresno Traffic Association.

S. T. Hill and *Thomas D. O'Brien* for Minnesota Editorial Association.

C. E. Hinds for Butler Brothers.

D. O. Ives for Boston Chamber of Commerce.

Francis B. James and *E. E. Williamson* for American Multigraph Company, and Ingersoll-Rand Company; International Steam Pump Company, embracing: Henry R. Worthington, Geo. F. Blake Manufacturing Company, Knowles Steam Pump Works, Holly Manufacturing Company, Deane Steam Pump Company, Snow Steam Pump Company, Laidlaw-Dunn-Gordon Company, Clayton Air Compressor Works, Power & Mining Machinery Company, Fred M. Prescott Steam Pump Company, Jeanesville Iron Works Company, Mine & Smelter Supply Company, and Sullivan Machinery Company.

H. D. Jett for John Deere Plow Company.

R. M. Joyce for Henkle & Joyce Hardware Company.

H. G. Krake for Commercial Club of St. Joseph, Mo.

H. C. Lau for H. C. Lau Company.

H. F. Lindsay for Lindsay Brothers.

O. A. Leach for Wholesale Grocers.

M. L. Letts for Letts-Parker Grocer Company.

Cornelius Lynde, of Cassoday, Butler, Lamb & Foster, for Chicago Association of Commerce, Wholesale Grocers' Exchange, National Cannery, Libby, McNeil & Libby, and others.

E. J. McVann for Commercial Club of Omaha, Nebr.

Seth Mann for Traffic Bureau of San Francisco Chamber of Commerce.

F. W. Maxwell for Colorado Manufacturers' Association Traffic Bureau and Denver Chamber of Commerce.

G. S. Maxwell for Chambers of Commerce of Dallas and Fort Worth, Texas.

W. A. Mears and *S. J. Wettrick* for Transportation Bureau of the New Seattle Chamber of Commerce.

Albert N. Merritt for Wholesale Grocers' Exchange of Chicago.

F. B. Montgomery and *S. D. Snow* for International Harvester Company.

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C. E. More and *S. D. Snow* for National Implement & Vehicle Association.

Louis Motter for Nave-McCord Mercantile Company of St. Joseph, Mo.

C. D. Mowen for Fort Smith Traffic Bureau.

C. C. Oden for Houston Chamber of Commerce.

A. W. Reeves for El Paso Chamber of Commerce.

Geo. A. Schroeder and *Chas. Manegold, jr.*, for Milwaukee-Waukesha Brewing Company.

George Schwake for Grainger Brothers Company.

F. R. Sebenthall for Wisconsin Retail Implement Dealers' Association.

H. W. Selle for Excelsior Manufacturers.

Geo. T. Simpson for Minnesota Potato Growers & Shippers' Association.

Sprague, Warner & Company for Wholesale Grocers' Exchange of Chicago.

W. H. Story for American Seeding Machine Company.

Joseph N. Teal for Transportation Committee, Portland Chamber of Commerce; Traffic Bureau, Chamber of Commerce, Seattle; Traffic Bureau, and Tacoma Commercial Club and Chamber of Commerce.

W. P. Trickett and *T. A. McGrath* for Minneapolis Civic and Commerce Association.

O. Van Brunt for Simmons Hardware Company.

Martin Van Persyn for Chicago Wholesale Grocers' Exchange and Sprague Warner & Company.

Nash S. Weil for Sanger Brothers of Dallas, Tex.

W. S. Whitten for Lincoln Commercial Club.

H. G. Wilson for Commercial Club of Kansas City and National Industrial Traffic League.

O. R. Winslow for Commercial Club of Grand Forks.

R. C. Fyfe and *W. F. Dickinson* for Western Classification Committee.

R. M. Collyer for Official Classification Committee.

W. R. Powe for Southern Classification Committee.

J. W. Allen for Missouri, Kansas & Texas Railway Company.

W. H. Gatchell for General Managers' Association of Southeastern lines.

H. H. Holcomb for Chicago, Burlington & Quincy Railroad Company.

Wm. E. Prendergast and *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company.

Elmer H. Wood for Union Pacific Railroad Company.

E. J. Seymour for Chicago & North Western Railway Company.

25 I. C. C.

REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

On December 28, 1911, the carriers in western classification territory, through their authorized agent, filed with the Interstate Commerce Commission "The Western Classification No. 51, I. C. C. No. 9," to take effect February 15, 1912. Numerous protests were filed against the new classification alleging that the changes contemplated would result in raising the general level of rates throughout western classification territory. It was requested that an opportunity be granted protestants to further examine the proposed schedule, in order to ascertain the probable effect of the changes in classification therein provided, and to be heard by the Commission in respect thereof. On January 29, 1912, an informal hearing was held at Chicago before representatives of the Commission.

By order of the Commission, dated February 8, 1912, the operation of western classification No. 51, I. C. C. No. 9, was suspended for a period of 120 days from the proposed effective date thereof, and the Commission entered upon an investigation concerning the propriety of the advances in rates therein contained. By order of May 17, 1912, the suspension was extended until December 14, 1912. The carriers voluntarily extended the suspension until February 14, 1913. In compliance with the Commission's request, complainants and carriers filed printed statements of their objections to and defense of the proposed classification. Over 20 formal complaints were filed with the Commission by individual shippers, associations of shippers, and state railroad commissions.

Hearings were held at Washington, Kansas City, Minneapolis, Chicago, San Francisco, Portland, Oreg., and Seattle. Over 4,000 pages of testimony were taken and a large number of voluminous exhibits were filed. Elaborate briefs were filed by the carriers and state commissions as well as by other parties; and oral argument was heard in Washington on October 16 and 17.

THE NUMBER OF CHANGES.

The number of changes in western classification No. 51 against which protest has been made before the Commission in this proceeding has been estimated at from 1,500 to 2,000. Of this number more than one-half result in reductions in charges and the remainder in advances. This includes all changes whether resulting from a change in the class proper of an article, a change in minimum, the application of rules or package requirements. A mere statement of the number of changes does not afford a measure of their importance, because an advance or a reduction in a single item, representing a great volume of business throughout western territory, may from a financial point of view more than offset changes of the opposite character in scores of other items.

FUNDAMENTAL ISSUES.

The two really momentous questions involved in this proceeding are the questions of minimum weights and of mixtures, the latter including especially a great variety of complaints on the part of people interested in agricultural implements and machinery.

The changes made in the various rules hereinafter discussed are highly important to the country as a whole, and, in addition, there are hundreds of items affecting single interests, or groups of interests, with varying degrees of importance; but what may be the least important of them from the point of view of the country as a whole are doubtless just as important to somebody, somewhere, as these momentous issues are consequential to the whole public. It is, therefore, most desirable that every change should be examined with the greatest possible care. Where the number of changes, however, is as great as is involved in this one proceeding it is apparent that no body of men can, in a relatively short time, give such consideration to each item as will enable them to express their conclusions with reference to each with that degree of confidence as to their correctness as would be desirable. While the record is full, and apparently complete, in regard to many items, there are numerous others with reference to which there is no direct testimony nor other evidence; and we wish to state at the outset that we shall hold ourselves in readiness to modify any of the conclusions or suggestions herein expressed just as soon as sufficient reliable information making such modifications just and proper may become available. This applies, perhaps, especially to the hundreds of changes regarding which there is nothing in the record.

It would have been very much easier to deal with the situation presented in this proceeding if the changes proposed had been submitted on the installment plan—in single files rather than in battalions. Except for the accumulation of this great number of changes before giving publicity to them, we can not see that in the instant case the Western Classification Committee has proceeded in any manner different from that in which such bodies have been in the habit of proceeding heretofore. In fact, the committee appears to have been more searching and deliberate in its investigations and in framing its conclusions.

CLASSIFICATION A PUBLIC FUNCTION.

The making of a freight classification is a great public function. In the past the hearings before the classification committees have been semipublic rather than public, and in a certain sense they have been private, although in later years the tendency has been toward greater publicity. Public business can not be conducted in a private

way. The failure to recognize this fact fully, and to proceed in accordance with it, has been largely responsible for the commotion centering about classification No. 51.

METHODS OF CLASSIFICATION PROCEDURE.

We are referring to the methods of classification committees generally up to the present time. These methods must be changed to meet the present situation. No great reform like classification reform, which touches every interest in the country, can ever hope to be carried into effect without causing disturbances, annoyance, and opposition, and some injustice. It is therefore especially important that before a classification committee publishes new rules, descriptions, packing requirements, and ratings full public hearings shall have previously been given after sufficient notice. It is not necessary to hear *everybody*. In making a classification that would mean endless repetition and interminable controversy without ever reaching a conclusion. Rather is it important to hear *everything*. In other words, a body of experts in classification should hear and know everything and then form their conclusions. The conclusions thus formed should not be lightly set aside.

The present proceeding has most forcibly demonstrated the necessity of affording wider publicity and fuller public hearings in connection with the future development of classification. If the classification committee will submit proposed changes in smaller installments, if it will give ample public notice to interested parties of hearings, if it will invite representatives of all the interested state commissions and of the Interstate Commerce Commission to participate in all such hearings, and if it will give due consideration to all matters which such a course of action will bring to its attention, unwieldy proceedings like the present investigation will be avoided in the future. Hearings of the character indicated will impress upon the classification committee the public point of view in a manner which is impossible under past methods of classification procedure. It is this point of view which alone can give the facts at the command of experts their proper setting and balance. We believe that a modification of procedure along these lines will greatly facilitate the completion of a uniform classification.¹

CLASSIFICATION UNITS.

For years past the Western Classification Committee has compiled to a certain extent what are designated classification units. These units as compiled are a combination or sum of unlike parts, but may be expressed with equal propriety as a product composed of unlike

¹ Since these proceedings were instituted the carriers have invited the Interstate Commerce Commission to send a representative to classification meetings.

factors. They are intended to express the relation to one another of weight, space, and value. While a unit test of this character may not finally determine the classification of an article, it constitutes a basis for comparison with other articles. When all the modifying conditions and facts are known, a fair classification relation may be established among articles through the aid of this classification unit. A compilation of classification units just as far as practicable for every item in the classification would doubtless be of substantial value in the present formative work. The classification is in an inchoate state. Perhaps every classification must remain so. Constant change appears to be inherent in industrial life. In the preparation of western classification No. 51 (and hereafter this classification will be referred to as No. 51 and its predecessor as No. 50) the unit principle test appears to have been applied to some articles and not to others. For many articles the units were not even compiled. The classification would be able to meet the test of adverse criticism, as well as of independent inquiry, much better if this unifying principle had been considered throughout. We believe these units should be compiled and given due consideration. What importance is to be attached to the unit figure is a matter for decision in each case.

WHAT IS UNIFORMITY?

Early in the hearings an attempt was made to elicit from competent witnesses information regarding the exact meaning and expression of uniformity in classification. The contents of the term uniformity have apparently not yet taken definite shape. The uniform classification of 1891 was an attempt to combine the then existing classifications. No. 51 is said to represent an attempt to introduce uniformity with respect to rules, descriptions, packing requirements, and, to a certain extent, ratings. But what is the test of this uniformity? In some cases it was the existing official classification, in others the southern, in others the western, and in still others something entirely new and different from all of them. The question may well be asked whether real uniformity—that is, a single classification for the whole United States—can ever be achieved in this manner. May it not become necessary to subject all of the 10,000 or more objects of transportation to a combination of unifying principles and recast them into an entirely new classification having no relationship, except an accidental one, to the existing classifications, and except in so far as the identity, or similarity, of inherently correct classification principles applying to a given article may bring that about? In asking this question it is assumed that the work of classification is to be confined to classification as such, entirely separated from the ques-

tion of rates and revenues of carriers. These latter are vital, of course, and must be carefully considered, but not until after the classification has actually been worked out.

RATES A SEPARATE ISSUE.

Classification is an art or a science in itself. Having completed a new classification along these or similar lines, each carrier can re-adjust its rates on the basis of that classification in such a manner as to preserve its existing revenues. This assumes what, in our judgment, is the correct method of procedure, that the uniform classification must be worked out without an attempt to affect revenues. Classification and rates and revenues should be kept entirely separate. There will doubtless be many coincidences in which the present rate applied to the new classification will bring about the exact transportation charge which results from the old rate applied to the old classification. In other cases the rate must be advanced or reduced, depending upon the change in the classification of the article in order to protect existing revenues. This is entirely without reference to the sufficiency or insufficiency of present revenues, which is a distinct and very different question. It would only complicate and confuse matters to attempt, through the instrumentality of the classification, to bring about a revision in rates and charges. Whether a rate is too high or too low should be made a separate issue distinct from classification. Nevertheless, as far as possible, the establishment of ratings and the publication of rates should follow changes in the classification very closely. A classification is a universal tariff from which the schedules of individual carriers should not depart, except in cases demanded by special conditions. Commodity tariffs in restricted numbers will probably always remain a necessity.

CLASSIFICATION HISTORY SINCE 1887.

At this point the past history of the classification movement may be briefly described, going back to the year 1887.

The early development of classification of freight by the railways in the United States was not along any definite lines. Acting independently, carriers originally adopted individual classifications. It has been estimated that there were, at one time, as many as 138 distinct classifications in eastern trunk line territory, varying in the number of classes provided, each classification built up independently of all others to serve the needs of the particular road to which it applied.

The formation of through routes over connecting lines and the growth of through traffic necessitated the establishment of classifications in addition to those adopted by each separate carrier for its own traffic. To meet this need confederations of railroad companies

established classifications for through traffic in various sections of the country, some covering large and some small areas. The following are classifications so formed, all of which were later absorbed by the official classification: The trunk lines westbound classification, the eastbound classification, the joint merchandise freight classification, the middle and western states classification, the east and south-bound classification.

As a result of this multiplicity of classifications there was great confusion in the traffic situation in this respect. In very many cases two or more classifications were in force on one road; one for local traffic, one for through traffic in one direction, another for that in the opposite direction, and a fourth, perhaps, for traffic coming from or going to a particular section of the country. In 1883 the Wabash Railroad Company had nine different classifications in effect for traffic originating on its line. The existence of so many classifications was a public evil and necessarily resulted in constant embarrassment in the interchange of traffic between the roads. Traffic managers and agents found it difficult to quote rates on through traffic with any degree of accuracy, and the owners of the freights were frequently subjected to the payment of freight charges greatly in excess of what they had anticipated. It was evident that greater uniformity in classification was an urgent need.

The prohibition of unjust discrimination by the interstate-commerce act of 1887 stimulated the movement for uniformity. It was recognized by railroad officials that they could not observe the law without establishing greater uniformity of classification.

The first important step in that direction was the establishment of the official classification, which was put in force in 1887 contemporaneously with the taking effect of the act to regulate commerce. This classification was generally adopted throughout the territory north of the Ohio and Potomac rivers, and east of a line roughly drawn from Chicago to St. Louis and the junction of the Mississippi with the Ohio. There were at this time 131 railway companies within official classification territory, many of which still had a separate local classification. At first the official classification did not entirely displace all others within the territory which it covered. Of the total number of roads using it in 1888, 87 used the official classification exclusively, 35 used one other, and 9 used two others.

In 1882 the joint western classification, the forerunner of the present western classification, was adopted by certain roads running west from Chicago and became effective in 1883. The roads making use of the western classification steadily increased in number until in June, 1889, there were 69. During the same year the roads that

formed the Texas association and also the transcontinental lines used this classification so that, by the end of the year, practically all the railways operating throughout the territory from Chicago and St. Louis to the Pacific coast had adopted it.

By 1889 the lines south of the Ohio River and east of the Mississippi River had adopted the classification of the Southern Railway & Steamship Association, later designated as the southern classification.

Since the passage of the interstate commerce law no practical advance has been made toward unification except as the result of the absorption of special and exceptional classifications into those of the three chief classifications of the country.

At the present time these three great classifications, the official, western, and southern, subject to exception sheets and commodity rates of the individual carriers and the limited use of certain state classifications, transcontinental tariffs, and the Canadian classification, are the only classifications applying to interstate traffic. Occasionally, however, these classifications overlap. Articles shipped from a point in one territory to a point in another are sometimes governed by the classification of the point of origin and at other times by that of the place of destination. Confusion arises particularly in the shipment to and from a point located comparatively near a classification boundary. St. Louis, for instance, uses the official classification for eastbound freight, the western for westbound freight, the southern for southbound freight, and the transcontinental tariffs for Pacific coast trade.

As early as 1887 an attempt was made by traffic officials of lines east and west of Chicago to unify the official and western classifications, but a series of rate wars interfered with the work.

In 1888 the House of Representatives passed a resolution authorizing and directing the Interstate Commerce Commission within three months, or by January 1, 1889, to prescribe a "uniform classification" for all the roads in the United States. The resolution was unacted upon by the Senate, representations having been made that if the railroad companies were given further time they would obviate the necessity for congressional action. Prompted by the disposition thus manifested in the popular branch of Congress and urged thereto by pressure constantly brought to bear by this Commission, a convention of traffic officials of transportation companies throughout the country met in Chicago, December 4 and 5, 1888, for the purpose of considering uniformity of classification. At this meeting a standing committee of two members from each of the eight traffic associations represented was selected and was instructed "to endeavor to combine the existing classifications in one general classification by the use of such number of classes as will prevent conflict-

ing commodity as well as class rates in the several sections of the country, without sacrificing the proper interests of the carriers."

Meetings were held by this committee at various places from time to time during the years 1889 and 1890; and finally in June, 1890, a classification was agreed upon and recommended for adoption by all the roads on January 1, 1891. The proposed classification contained nominally 11 classes, in addition to which the classification provided one and one-half, double, two and a half, three and four times first class, making in reality 16 classes. The first 5 numbered classes and the multiples of first class applied to less-than-carload lots, while for carload lots the remaining 6 numbered classes were used.

With the proposed uniform classification the committee submitted a set of rules for the establishment of a permanent organization. These rules provided for a board of uniform classification to consist of representatives from various territories in which the proposed classification would be made effective. This board was to have power by a vote of two-thirds of its members to make necessary changes in or additions to the classification, and its decisions were to be final. The board was to elect a chairman and three district chairmen, one for the district covered by the present official classification, one for that covered by the southern classification, and a third for that covered by the western classification. It being recognized that many changes would have to be made in the classification from time to time, the rules provided that applications for relief were to be made to the district chairmen who would summarize the cases, and present them to the board for determination. The district chairmen were to unite in recommendations as to the rate to be given new or analogous articles, but such advice should not prevail unless the chairman approved, authority thus given to be subject to review by the board at its succeeding meetings.

The following traffic associations were represented on the committee which made this report: The New England Freight Association, Central Freight Association, Western Freight Association, Mississippi Valley Railroads, Trunk Line Association, Southern Railway & Steamship Association, Trans-Missouri Association, and the Southern Interstate Association. Early in the proceedings the Transcontinental Association had withdrawn its representatives from the committee and had failed to unite in the result reached by the conference.

The members of the committee emphasized the necessity of showing a broad and liberal spirit. While at no time forgetful of the interests they represented, they endeavored to keep within the horizon the desirability of also regarding matters from a national rather than a sectional standpoint. In their report the desirability of re-

ducing the number of commodity rates in the various territories to a minimum was emphasized. While the right of roads by agreement to make commodity rates was conceded, it was understood that this privilege should be exercised sparingly. The report stated:

The continued operation of the interstate commerce law made plain the necessity for greater uniformity. In deference thereto, and also to meet the demand for through lines, it became essential to facilitate the quotation of through rates between points far removed. This could most readily be done by the issuance of tariffs governed by one classification. If two or more classifications were used, resort must be had to numerous commodity tariffs. Moreover, the disparities encountered proved annoying to shippers and embarrassing to the roads. The public failed to perceive, nor was it always possible to explain, why articles of common use should be classified differently east and west or north and south of certain dividing lines.

The constant increase of traffic interchanged with railroads in the populous states, together with the legal requirements as to the publication of joint tariffs, emphasize the desirability (no less than the necessity) of at least approximating uniformity in freight classification. Without such reform in the territories wherein dissimilar classifications overlap, it is impracticable to avoid discriminations such as are forbidden. Furthermore, it is impossible in all cases to insure the equalization of through rates via the several gateways between large producing and consuming sections when different rules and classifications prevail upon connecting lines. Confusion and liability ensue and necessarily will continue until the more glaring differences are removed. That relief your committee labored to afford.

When January 1, 1891, came, the time fixed for the adoption of the proposed uniform classification was postponed until March 1, 1891, at which time no action was had. With March 3 came the adjournment of Congress, and with its adjournment all further efforts on the part of the carriers toward a uniform classification came to an end.

In 1906 the Hepburn act was passed giving this Commission increased powers. One clause of this act provided for through rates and routes, which requirement made the necessity of uniform classification still more evident.

The question of uniform classification continued to be agitated, and in 1907 it was again taken up seriously by the railways. A committee of 15 members, consisting of 5 from each classification territory, was appointed to consider whether uniformity in classification could be accomplished and to suggest a mode of procedure to be followed by a permanent committee to be appointed later. This temporary committee, after three months of continuous investigation, reported that "while establishment of a uniform classification is impracticable at this time, it can ultimately be worked out along intelligent and satisfactory lines." The committee concluded that as to rules, descriptions of articles, packing requirements, and minimum carload weights uniformity was possible

of attainment; that uniformity in these respects, when accomplished, would represent material improvement in classification conditions; that such uniformity must in any event be accomplished before uniform classification ratings can be adopted; and that a committee should be created whose exclusive work should be the preparation of the uniform rules, descriptions of articles, packing requirements, and minimum carload weights. An executive committee of 21 executive traffic officers was appointed by the carriers to supervise the work, and that committee selected 9 traffic men, to be known as the "working committee," who were to devote their entire time to the work. This committee, known also as the committee on uniform classification, was formally organized and began its labors on September 15, 1908, and has been exclusively engaged in such work since that time.

The original plan of the committee was to proceed continuously with the revision of rules, descriptions, and minimum weights, until it was ready to propose a complete uniform scheme. After consideration, however, it was determined to suggest to the territorial classification committees, from time to time, such changes as had already been decided to be desirable in the interest of uniformity. After making a careful comparison of the three classifications, the rules were taken under consideration, and following the rules the general descriptions, packing requirements, and minimum weights. Many conferences with shippers were held and the members of the committee spent a great deal of time in the field making personal visits to manufacturing plants and districts. The findings of the uniform committee were submitted, from time to time, in printed reports to the several classification committees for consideration. The changes proposed were placed upon the dockets of the several classification committees, and again hearings were held, in which shippers were invited to participate. The findings of the uniform committee, in the form adopted by the Western Classification Committee, appear in No. 51, which is under consideration in this case.

In the act of June 18, 1910, amending the interstate-commerce law, the following provisions were inserted in section 1:

And it is hereby made the duty of all common carriers subject to the provisions of this act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed; and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading; the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this act which may be necessary or proper to secure the

safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this act upon just and reasonable terms; and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the states and with foreign countries is prohibited and declared to be unlawful.

And section 15 was amended so as to provide as follows:

That whenever after full hearing * * * the Commission shall be of opinion that * * * any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, the Commission is hereby authorized and empowered to determine and prescribe * * * what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make and order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, * * * and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Section 15 further provides:

The Commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged, and may prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line.

These provisions clearly give the Interstate Commerce Commission large supervisory powers over the classification of freight.

THE ATTITUDE OF THE INTERSTATE COMMERCE COMMISSION ON UNIFORMITY OF CLASSIFICATION OF FREIGHT.

In its first annual report, 1887, this Commission commended the work of the roads in reducing the number of classifications as "extremely important and useful," but emphasized the necessity of a single classification for the entire country. Repeated mention of the importance of unification was made by the Commission in its succeeding annual reports. Its desirability was recognized and urged again and again by state railroad commissioners assembled in their annual conventions, by shippers' organizations throughout the country, and by railroad officials themselves.

After the act took effect, unjust discriminations and other grievances, resulting from disagreeing classifications, were among the first complaints requiring investigation. In *Pyle & Sons v. E. T. V. & G. R. R. Co.*, 1 I. C. C., 465, 472, the Commission said:

One of the many embarrassments connected with the transportation of freight by railroads consists in the fact that there is such a lack of uniformity in the classifications of freight found in the different portions of the country.

In another case where the Commission was called upon to investigate classifications it was declared (referred to on page 55 of the seventh annual report, 1893)—

The inconsistencies in the treatment of such shipments by different carriers under different classifications, and frequently by the same carriers where different classifications are used for different destinations, have been a source of constant annoyance to the community, and have constituted one of the little things the multiplication of which has tended to create and intensify a feeling of irritation against railroads and their managers. The whole matter is in a state of elaborate and unjustifiable confusion.

In its seventh annual report to Congress, 1893, page 55, the Commission declared:

Our experience in making investigations and administering the law afford many illustrations of the confusion and injustice which come as the direct effect of a varying, diverse, and conflicting arrangement. The field of interchange of products has so extended that the products of every section reach the markets of every other section of the country. The margin of profit upon all is so narrow that an error in rates as the result of differing classification takes away profits and brings vexations and losses.

In its eleventh annual report, 1897, page 70, the Commission said:

That the present diversity results in many discriminations and losses can not be doubted, and there is no single step that may be taken by the carriers which will go so far to secure the establishment of stable rates as the adoption of a single and comparatively fixed classification.

These are but a few of the many declarations the Commission has made upon this subject. As often as it has had occasion to refer to the subject of a uniform basis for rate schedules over the whole country, whether in annual reports, opinions rendered, correspondence had, or personal conferences, it has not failed to emphasize the importance and indeed the necessity for such uniformity.

It has been the opinion of the Commission from the beginning that the work of unification could best be undertaken by the carriers themselves. During the early years when the movement toward uniformity seemed to give promise for the establishment of a single classification for the entire country, the Commission was quite insistent that the railroads should not be interfered with in the work. In its second annual report, 1888, in summing up its conclusions on this subject, the Commission said:

So long as carriers appear to be laboring toward unification with reasonable diligence and in good faith it is better that they should be encouraged and stimulated to continue their efforts than that the work should be taken out of their hands.

The Commission comments as follows, in its fifth annual report, 1891, page 28, upon the resolution offered in Congress in 1888:

The failure of this resolution to pass the Senate was a circumstance which the Commission did not regret, since it appeared then, as it does now, that the action desired could be taken by the railway authorities themselves, if they

could within any reasonable time be induced to act, with much less risk of injury to the financial interests of the carriers and of the public than would attend the efforts of the Commission or any other public agency to establish a uniform classification.

In its attitude toward the proposed uniform classification of 1890 the Commission was extremely liberal, as is evidenced by the following extracts from its annual report of that year:

For a considerable period, therefore, after the new classification shall be given effect it must be expected that modifications will from time to time be made as the practical application to the business of the country shall make plain the necessity or the justice of changes. It is also to be expected that many objections will go beyond criticism of particular features and that those who have insisted from the first that uniform classification was impracticable will not immediately cease from urging that view warmly and earnestly, so that possibly it may appear for a time as if the business public condemned the work. But temporary opposition of at least the interests affected is a necessary attendant upon any considerable reform in railway service, and the agreement upon a uniform classification, however defective the work may at first appear to be, is of itself, as the Commission believes, in some sense a reform, because it brings the carriers together on a common platform and fixes in the minds of managers the fact that the question involved is no longer one of making a common classification but of perfecting it.

For reasons stated in the report, and which would be obvious without stating, it is but reasonable and just to the carriers endeavoring to effect this reform that great patience on the part of the people be invoked while the new classification is being put in force and is having its first effect on the business of the country. It is very plain that large numbers of shippers, and to some extent whole sections of the country, must be disappointed in the rating of their articles, and that many interests must for a time necessarily sacrifice something to the general good. Any such work is only accomplished by numerous compromises of divergent interests, and it is reasonably to be expected that there will be found in every section of the country those who believe that the changes have been made in the wrong direction, with the consequent result that their own interests suffer from the modifications in classification which injure where they should have helped them. All such complaints will no doubt have due attention, but when the work is perfected and the business of the country has had time to adapt itself to uniform classification, there is every reason to believe the advantages to the country at large and to business interests in every section will be so great and so obvious as to compel universal acknowledgment.

Upon the failure of adoption of the uniform classification proposed in 1890, the Commission, in its fifth annual report, 1891, stated that: "It does not feel justified in asking for further efforts of the carriers the same measure of indulgence which from time to time it has heretofore suggested should be extended to them, and which was thought to be required in the public interest," and recommended to Congress the passage of an act "requiring the adoption within one year from the date of its passage of a uniform classification of freight by the carriers subject to the act to regulate commerce, and providing that if the same be not adopted within the time limited, either this Commission or some other public authority be required to adopt and enforce

a uniform classification." It has been the attitude not only of the Commission, but also of state railroad commissioners, as expressed in resolutions adopted at their annual conventions, and of shippers, that the country can not without legislative inducement expect uniformity within a reasonable time as the result of voluntary action of railway officials. This Commission has, however, continued to be of the opinion that the practical experience of the carriers gives them a special fitness for the task. Thus we find the following expression by the Commission in its eleventh annual report, 1897, pages 68 and 69:

It is evident that the carriers themselves, by mutual concessions and through voluntary and harmonious action, can accomplish this reform with much less loss, embarrassment, and friction than will presumably result if Congress or some delegated tribunal establishes a classification for them.

It was therefore with distinct interest and satisfaction that the Commission noted the definite steps recently taken by carriers to establish a standard classification which should take the place of the existing separate classifications. After commenting upon the work done in revising rules, regulations, and descriptions, the Commission, in its annual report for 1910, says:

The question of determining a uniform number of classes for rate assignments is recognized as a more difficult and intricate problem, and it is realized that a somewhat longer time will be necessary for consideration and adjustment to this feature of uniformity.

It was thought proper by the Commission to suggest to the carriers that as rapidly as any of the features of uniformity were determined upon by the uniform committee the same should be incorporated in the existing classifications, as under this plan an increasing degree of uniformity may be gradually accomplished.

The Commission has always realized that the difficulties and work connected with the establishment of a uniform classification, or even approximating a uniform classification, are very great. It has constantly been recognized that the final adjustment of a uniform classification must necessarily be the arrangement of a great number of compromises. On pages 32 and 33 of its fourth annual report, 1890, the Commission said:

It was perfectly obvious that the merging could not be effected by the voluntary action of the railroad authorities which had made the classifications without very great concessions being made on every side—concessions the necessary effect of which must be, while lowering the relative rates upon some articles of commerce, to very considerably increase them upon others. Not only would the roads be affected thereby, but every section of the country would of necessity be compelled to resign something of the advantage which before it has enjoyed in respect to its special products or industries; and it could not be expected to assent to this willingly until it should be made to see that adequate compensation was made in other directions. It would not be enough that the completion of such a work could plainly be seen to be of

national importance and politic and useful for the people as a whole, but it must also be evident to any particular section that it lost nothing by its accomplishment. Even when this was obvious, the local interests unfavorably affected by the unification must be expected to oppose it vigorously.

On the other hand the Commission has said in *Investigation and Suspension Docket No. 23*, 21 I. C. C., 103, 107:

While every effort conducive to such uniformity is to be commended, it by no means follows that that result should be attained by accepting as a standard a classification prescribing a rating which when applied to a given commodity or territory becomes unreasonable.

It was further recognized by the Commission that:

When unification is finally accomplished, whether by the voluntary action of the carriers themselves or as a result of compulsory legislation, there must be a transition period while the country is becoming familiarized with it when some degree of embarrassment and dissatisfaction is to be expected and when large demands will be made upon the patience and forbearance of the general public while business is adapting itself to the working of the new order of things. [Fifth annual report, 1891, page 34.]

Although recognizing that there are great difficulties to be overcome, the Commission has constantly maintained the view that unification is practical.

That this is entirely practicable is demonstrated by the great advance which has already been made toward uniformity, and by the fact that such progress could not have been attained without the subordination of business and carrying interests in various localities to the commercial and transportation conveniences of the country at large. The accomplishment of uniform classification involves only a continuance of the work upon the line of rendering individual interest and local advantage subservient to the general welfare. That this will not require any real sacrifice or injury is proven by the absence of any proposition to retrace a single step in the work which has been done toward securing uniformity; on the contrary, all interested parties concede the great desirability, and most commercial interests urge the necessity, of a single freight classification. [Eighth annual report, 1894, page 35.]

In its eleventh annual report, 1897, page 67, the Commission says:

But these difficulties are not insurmountable to men of long experience in work of this sort, and it is believed that the great mass of freight articles could be fairly grouped by them in a single classification. They would take into account whether commodities were crude, rough, or finished; liquid or dry; knocked down or set up; loose or in bulk, nested or in boxes, or otherwise packed; if vegetables, whether green or dry, desiccated or evaporated; the market value and shippers' representations as to their character; the cost of service, length and direction of haul; the season and manner of shipment; the space occupied and weight; whether in carload or less-than-carload lots; the volume of annual shipments to be calculated on; the sort of car required, whether flat, gondola, box, tank, or special; whether ice or heat must be furnished; the speed of trains necessary for perishable or otherwise rush goods; the risk of handling, either to the goods themselves or other property; the weights, actual and estimated; the carrier's risk or owner's release from damage or loss. All these circumstances, bewildering as they appear to a layman,

are comparatively simple to the expert; and the considerations which have retarded the adoption of a uniform classification have had little to do with difficulties of this description.

Before proceeding to a discussion of specific rules and other changes in No. 51, several other general considerations should be noticed. The first of these is the question of carload ratings.

WHEN CARLOAD RATINGS ARE NECESSARY.

Some carload ratings have been eliminated and others introduced. The number of these has been variously estimated. In connection with particular articles specified in the record this matter will be discussed in another part of this report. We desire here to direct attention to the fundamental question, "When is a commodity entitled to a carload rating?" No. 50 gave mousetraps a carload rating and No. 51 denies it. No. 50 denied a carload rating to caraway seed and No. 51 grants it. No. 50 granted a carload rate on bird seed and No. 51 denies it. In No. 51 there are carload ratings on shoe pegs and dog biscuits, while No. 50 contained no such ratings. Upon what basis should such questions be decided?

It is apparent that a manufacturer who can ship mousetraps by the carload has an advantage over the manufacturer who can not do so to the extent of the difference between the carload and the less-than-carload rate, minus the cost of loading and unloading. The mousetrap being an article of general use, but restricted volume of demand, can conceivably be manufactured in many localities to supply a local market. Shipments by the local manufacturer to near-by distributing points would naturally be in less-than-carload quantities and at less-than-carload rates. If, now, a distant manufacturer can secure a carload rating and ship into this local territory through his jobbers, he may possibly drive the local man out of the field, and to that extent, and in this respect, the carload rating leads directly to concentration. On the other hand, a denial of a carload rating on mousetraps might prevent a superior kind of trap from being introduced in territories which are now provided with only an inferior trap, locally manufactured, and sold at a high price. Assuming that people are entitled to the best quality of mousetrap at the lowest price, the conclusion follows that the carload rating of mousetraps has a tendency to improve the quality of traps and to reduce their price to the users. This is without reference to the desirability of exterminating mice, a consideration of which in this connection would open the door to many controversial fields.

The conclusion in which argumentative considerations relating to this question reach a point of equilibrium appears to be this, that a carload rating should be established for a commodity when that commodity can be offered for shipment in carload quantities, unless

public interests or other valid considerations require the contrary. We have in view primarily the territory affected by Western Classification and the practices heretofore in effect in that territory. It might be suggested that there should be a reasonable prospect of a minimum number of carloads within a certain period of time, but this leads to arbitrary limitations when such limitations are not inherently necessary. Assuming a proper relation between carload and less-than-carload rates, the establishment of carload ratings whenever carload quantities are offered will, we believe, meet the needs of new and growing lines of industry without discrimination.

This leads us to remark briefly with respect to another somewhat fundamental principle, namely, the relation of carload to less-than-carload rates.

RELATION BETWEEN CARLOAD AND LESS-THAN-CARLOAD RATES.

It appears that an excessive difference between the carload and the less-than-carload rates on the same commodity results in an undue preference to the carload shipper of that commodity. Both the assignment of a commodity to its place in the classification and the tariff rate made applicable to the respective classes by individual carriers determine the relationship of carload to less-than-carload shipments expressed in dollars and cents, which, after all, is the relationship which interests the public. For purposes of illustration it may be assumed that a commodity "X" is placed in class C when shipped in carload quantities and first class when shipped in less-than-carload quantities. This classification in itself creates a certain gap between the carload and less-than-carload quantities. If, now, between two given points the carload rate on the commodity "X" is 10 cents and the first-class rate 65 cents, this gap is greater than it would be if the carload rate were 10 cents and the first-class less-than-carload rate 50 cents. The gap would be still greater if the commodity "X" took class-E rate in carloads and double first class in less than carloads, with perhaps a class E rate between two given points of 5 cents as compared with a double first-class rate of \$1.30. The gap is very much narrowed if the commodity "X" is placed into class B in carload quantities and first class in less-than-carload quantities, with a rate of, say, 15 cents on class B and 35 cents for first class less than carload. It must be apparent to everyone, without further discussion, that the position of carload and less-than-carload manufacturers and jobbers who compete, so far as the railway charges affect this competition, is very different in each of the assumed illustrations with respect to the commodity "X." We give below tables which are fairly illustrative of the relationship of carload to less-than-carload quantities as shown in existing classifications and rate schedules.

TABLE BASED UPON NO. 51.

Showing class rates on articles named, l. c. l. and c. l., from Chicago, Ill., to Denver, Colo., Omaha, Nebr., and St. Paul, Minn. Rates given are computed by applying No. 51 to existing rate schedules.

Commodity.	Quantity and class.	To Denver, Colo.		To Omaha, Nebr.		To St. Paul, Minn.	
		Rates.	Percent- age, c. l. to l. c. l.	Rates.	Percent- age, c. l. to l. c. l.	Rates.	Percent- age, c. l. to l. c. l.
		<i>Cents.</i>		<i>Cents.</i>		<i>Cents.</i>	
Coffee.....	L. c. l., 4th.....	85		32		25	
	O. l., 5th.....	87	0.7882	27	0.8487	20	0.80
Conduits, cement.....	L. c. l., 4th.....	85		33		25	
	O. l., E.....	40	.4705	16	.50	13	.52
Iron castings (less than 100 lbs. in bundles).....	L. c. l., 1st.....	180		80		60	
	O. l., 5th.....	67	.3722	27	.3574	20	.3333
Iron castings (over 100 lbs. in bundles).....	L. c. l., 3d.....	110		45		40	
	O. l., 5th.....	67	.6090	27	.60	20	.60
Powder, common black.....	L. c. l., D1.....	300		160		120	
	O. l., 1st.....	180	.50	80	.50	60	.50
	L. c. l., 3d.....	110		45		40	
Rakes, horse.....	O. l., A.....	80½	.7818	32	.7111	25	.625
	L. c. l., 3d.....	145		65		50	
Scythes.....	O. l., A.....	80½	.5551	32	.4923	25	.50
	L. c. l., 1st.....	180		80		60	
Threshers.....	O. l., A.....	80½	.4472	32	.40	25	.4166

TABLE BASED UPON NO. 50.

Statement showing class rates on articles named, l. c. l. and c. l., from Kansas City, Mo., to Denver, Colo., Oklahoma City, Okla., and Topeka, Kans.; also the relative percentages. Rates are those in effect at the present time.

Commodity.	Quantity and class.	From Kansas City, Mo.					
		To Denver, Colo.		To Oklahoma City, Okla.		To Topeka, Kans.	
		Rates.	Percent- age, c. l. to l. c. l.	Rates.	Percent- age, c. l. to l. c. l.	Rates.	Percent- age, c. l. to l. c. l.
Conduits, cement.....	L. c. l., 4th.....	65		62		15	
	C. l., E.....	30	0.461	23	0.370	5½	0.266
Iron castings (less than 100 lbs.).....	L. c. l., 1st.....	125		95		29	
	C. l., 5th.....	50	.40	46	.484	10	.344
Iron castings (over 100 lbs.).....	L. c. l., 4th.....	65		62		15	
	C. l., 5th.....	50	.700	46	.741	10	.686
Powder, common black.....	L. c. l., D1.....	250		190		58	
	C. l., 1st.....	125	.50	95	.50	29	.50
	L. c. l., 3d.....	80		74		19	
Rakes, horse.....	C. l., A.....	70	.75	48	.648	13	.631
	L. c. l., 2d.....	100		82		24	
Scythes.....	C. l., A.....	60	.60	48	.585	12	.500
	L. c. l., 1st.....	125		95		29	
Threshers.....	C. l., A.....	60	.48	48	.505	12	.413
	L. c. l., 4th.....	65		62		15	
Coffee.....	C. l., 5th.....	50	.700	46	.741	10	.686
Fiber packing boxes, n. o. s., empty.....	L. c. l., D1.....	250		190		58	
	C. l., 4th.....	65	.25	62	.326	15	.268
Burial cases, caskets etc., boxed.....	L. c. l., 2d.....	100		82		24	
	C. l., 3d.....	80	.80	74	.902	19	.791
Cement, building.....	L. c. l., 4th.....	65		62		15	
	C. l., C.....	40	.615	32	.516	8	.533
Gas burners and attachments.....	L. c. l., 3d.....	80		74		19	
	C. l., 5th.....	50	.625	46	.621	10	.526
Lamp-posts, bronze.....	L. c. l., 2d.....	100		82		24	
	C. l., 4th.....	65	.65	62	.755	15	.635
Pyrites.....	L. c. l., 4th.....	65		62		15	
	C. l., D.....	35	.526	26	.419	7	.406
Lamp and carbon, black.....	L. c. l., 1½.....	187½		124		43½	
	C. l., 2d.....	100	.523	82	.675	24	.550
Pontoons, wooden or steel.....	L. c. l., D1.....	250		190		58	
	C. l., 3d.....	80	.32	74	.399	19	.327

It appears to us that one of the great purposes in the construction of a uniform classification should be the establishment of just relations between carload and less-than-carload quantities in accordance with some consistent principle throughout the classification and the rate schedules which may be constructed upon it. All the different factors which enter into the establishment of a rate should be considered in the establishment of this classification and tariff schedule relationship. One of these elements which appears to be so frequently overlooked, judging by what is reflected in the above table, is the difference in the cost to the carriers of conducting the carload and the less-than-carload traffic. This cost should be ascertained as accurately as possible and due weight given to it in determining the classification and rates for less-than-carload quantities as compared with carload quantities.

CARLOAD MIXTURES.

We have already alluded to the general question of mixtures. Scores of special questions of mixtures are involved. But all of these are overshadowed by the application of various complainants and interveners to have rule 10 of the official classification incorporated in the western. Rule 10 of official classification reads as follows:

When a number of different articles (provided with l. c. l. and c. l. ratings) taking the same class or rate in carloads are shipped at one time by one consignor to one consignee and destination, in carloads, they will be charged at the c. l. rate applicable to said articles and at the highest minimum carload weight provided for any of the articles (actual or estimated weight to be charged for if in excess of the minimum weight), except that if the aggregate charge upon the entire shipment is less on basis of c. l. rate and minimum carload weight (actual or estimated weight if in excess of minimum weight) for one or more of the articles, and on basis of actual or estimated weight and l. c. l. rate or rates for the other article or articles, the shipment will be charged and waybilled accordingly. If the articles (provided with l. c. l. and c. l. ratings) are differently classified or rated in carloads, the carload rate for the article or articles taking the highest class or rate and the highest minimum carload weight for any such articles taking the highest class or rate shall be charged on all the articles that make up the carload (actual or estimated weight to be charged for when in excess of the minimum weight), excepting as provided in rule 7 (A), and also excepting that if the aggregate charge upon the entire shipment is less on basis of c. l. rate and minimum carload weight (actual or estimated weight if in excess of minimum weight) for one or more of the articles, and on basis of actual or estimated weight at l. c. l. rate or rates for the other article or articles the shipment will be charged and waybilled accordingly. (See notes 1, 2, 3, and 4.)

Note 1.—Packages containing articles of more than one class will be rated in accordance with the terms of rule 15-A.

Note 2.—Rule 10 will not apply upon shipments of live stock in mixed carloads. For rules governing shipments of live stock in mixed carloads, see live-stock regulations, pages 157 and 158.

Note 3.—Mixed carloads of live stock and vehicles, either self-propelling or nonself-propelling vehicles, will be subject to the minimum carload weights
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provided for live stock, and at the highest rate provided for either live stock or vehicles.

Note 4.—On mixed carload shipments, including articles packed in boxes, cases, drums, or pallets made of strawboard, pulp or fiber board, etc., and which, under the terms of rule 2 (B) and (C), are subject to an additional charge of 20 per cent, said additional charge will apply only to the weight of the articles in such packages and not to the entire carload shipment.

This rule has recently been amended so as to require that the commodity which shall govern as to rate and minimum shall equal at least 10 per cent of the entire carload shipment. The rule as revised by the official classification committee is published in supplement 8 to classification No. 38, and reads as follows:

(A) When a number of different articles (provided with l. c. l. and c. l. ratings) are shipped at one time by one consignor to one consignee and destination, in carloads, they will be charged at the c. l. rate applicable to the highest classed or rated article and at minimum carload weight as provided in sections B or C of this rule (actual or estimated weight to be charged for if in excess of the minimum weight), excepting as provided in rule 7 (A), and also excepting that if the aggregate charge upon the entire shipment is less on basis of c. l. rate and minimum carload weight (actual or estimated weight if in excess of the minimum weight) for one or more of the articles and on basis of actual or estimated weight at l. c. l. rate or rates for the other article or articles, the shipment will be charged accordingly. (See notes 1, 2, 3, 4, and 5.)

(B) If all of the articles in the mixture take the same class or rate in carloads, the minimum carload weight will be the highest provided for any of the articles.

(C) If the articles in the mixture are differently classified or rated in carloads, the minimum carload weight will be the highest provided for any article or articles taking the highest c. l. class or rate, provided the actual weight (or estimated weight if so classified or rated) of the article or articles taking the highest c. l. class or rate is 10 per cent or more of the highest minimum carload weight provided for any of the articles taking the highest c. l. class or rate.

If the articles in the mixture are differently classified or rated in carloads and the actual or estimated weight of the article or articles taking the highest c. l. class or rate is less than 10 per cent of the highest minimum carload weight provided for any of such articles, they will not be entitled to be included in the mixture, but will be separately charged at their l. c. l. rate or rates. (See section D.)

(D) If the aggregate charge upon any mixed carload shipment of articles differently classified or rated in carloads is less on basis of the c. l. rate for the article or articles taking the highest class or rate and on basis of the highest carload minimum weight on any article in the shipment than would accrue under rule 10 (C), the shipment will be charged at the rate for the highest classed or rated article or articles and at the highest minimum carload weight for any article contained in the mixture.

Note 1.—Rule 5 (C) will not apply to mixed carload shipments of which any article is subject to rule 27 when shipped in straight carloads.

Note 2.—Packages containing articles of more than one class will be rated in accordance with the terms of rule 15 (A).

Note 3.—Rule 10 will not apply upon shipments of live stock in mixed carloads. For rules governing shipments of live stock in mixed carloads, see live-

stock regulations, pages 157 and 158 of official classification No. 38 and pages 29, 30, and 31 of this supplement.

Note 4.—Mixed carloads of live stock and vehicles, either self-propelling or nonself-propelling vehicles, will be subject to the minimum carload weights provided for live stock and at the highest rate provided for either live stock or vehicles.

Note 5.—On mixed carload shipments including articles packed in boxes, cases, drums, or pails made of strawboard, pulp or fiber board, etc., and which under the terms of rule 2 (B) and (C) are subject to an additional charge of 20 per cent, said additional charge will apply only to the weight of the articles in such packages and not to the entire carload shipment.

ARGUMENTS ON MIXTURES.

Upon the argument attention was called to the fact that the present proposal involves the application of this rule to class rates only and not to commodity rates.

In support of the rule it was alleged that from a transportation standpoint not a single objection can be raised to a carload rate for mixed carloads. It was asserted that a carload rate is fundamentally a quantity rate based on economy in handling, that this is the only factor to be considered in making a carload rate, and that this economy is as absolutely a factor in the handling of a mixed carload of two or more commodities as it is in the handling of a carload of one commodity. The miscellaneous nature of the contents of the car, point of origin, point of delivery, ownership of contents, how, where, or by whom sold or bought, whether manufactured, bought, or sold by one or more parties, whether one party or another is permitted to sell or buy were declared not proper factors to consider in the making of a carload rate nor in the granting of the privilege of mixing a carload of various commodities at a carload rate. Mixed carloads were declared to be, in fact, carloads, and therefore entitled to a carload rate.

From a commercial standpoint it was argued that the objectors to the rule are not entitled to an adjustment of rates and application of rules that will afford them protection against outside competition, that rates should not be built on the theory that they are entitled to a monopoly of the trade in their section.

It was further contended that to allow one shipper to mix one class of goods and not to allow another shipper to mix another kind of goods, provided both shipments come under the well-established rule that justifies the making of carload rates—namely, economy in handling—constitutes a discrimination. Specific mixtures are generally especially suited to certain interests and may not meet the needs and requirements of other shippers and receivers of freight.

It was stated that there is no substantial difference between the equipment of western roads and roads operating in official classifica-

tion territory where the rule has been in force for a long time, without any apparent hardship to the carriers, such as would result from nonintelligent or extraordinary mixtures, necessitating the use of expensive equipment for articles which should move in cheap cars.

It was further stated that it should be borne in mind that the rate and the minimum must be taken together, and that the highest rate and the proper minimum are actually paid by the shipper, and that the shipment is entitled to a carload rate even where the commodity, which governs as to rate and minimum, constitutes but a small portion of the carload. In supplement 8 to official classification No. 38 the rule has been amended as shown above so as to require that the commodity which shall govern as to rate and minimum shall equal at least 10 per cent of the entire shipment. It is alleged, however, that such a provision would exclude the privilege of mixing in many instances when it ought to be accorded.

In regard to the centralization of distribution, feared by the opponents of the rule, it was asserted that there is no territory where industry and commerce are more equally and properly divided and disbursed than in Ohio, Indiana, Michigan, and those states which grew under the mixed-carload rule.

Attention was also called to the fact that a large number of mixtures originally provided for in western classification No. 26, 1898, have gradually been eliminated. Special reference was made to mixtures of food products.

In opposition to the rule, attention was first called to the fact that there are now a large number of specific mixtures in western classification.

It was argued that the Commission has not power under the act in the present proceeding to establish in western classification the rule under consideration.

Opponents of the rule alleged that the present specific mixtures do not necessitate the employment of any different equipment than would be employed if you shipped each of the component parts in that mixture by straight carloads, but that under the proposed rule the carrier may be required to accept any mixture which the most extraordinary shipper may thrust upon it, such as would necessitate putting a commodity which ought to go into a cheap car in an expensive car. The mixture of furniture and pig iron was used as an illustration. To require a carrier to use more expensive equipment than is necessary was declared to be virtually lowering his rate on the article so transported, in that its earnings are decreased.

The non-intelligent mixture, such as would increase the carriers' risk, due to damage to freight, was mentioned as another reason for not allowing absolute freedom of mixtures. While it was recognized that such mixtures would seldom occur, it was argued that a rule

should not be so formed as to give anyone the power to perpetrate a wrong, even though it be improbable that this power be exercised.

It is often contended that the rule under consideration is unfair, in that the shipper, by loading a less quantity than the prescribed minimum of a commodity taking a higher rate but lower minimum, can secure the shipment at a lower cost than if the lower rate and its minimum or the less-than-carload charge were applied.

In answer to the argument that the denial of universal mixture would result in discrimination, it was stated that those who feel themselves discriminated against have the privilege of appealing to the carriers or to the Commission, in the proper way, to have formulated a specific mixture rule that will cover their situation.

The opponents of the rule further stated that its application to western territory would result in a concentration of distribution for the entire western country at Chicago.

Emphasis was laid on the fact that the Commission is not formulating rules as it would if it were beginning with a virgin situation, entirely untrammelled by any preexisting conditions, but that we are dealing with a mass of rates that have already been established and with communities which have grown up under certain conditions. With the building of the west distributors have moved westward, great business and great establishments have been erected and have their foundation in the transportation situation that has prevailed. Disastrous effects would result to the trade of these western jobbers, it was asserted, if the rule were applied.

From an economic standpoint, it was argued that it is to the best interests of society that each community should have within it all the elements necessary to its well-being, and that consequently too great concentration of distribution is undesirable, even though such concentration might result in lower prices.

CONCLUSIONS ON MIXTURES.

Considering the facts of record and giving due weight to the arguments on both sides, we express the view that the somewhat general restriction and elimination of mixtures in No. 51 was a mistake and contrary to the best interests of the carriers themselves as well as of the public. In many former proceedings our attention has been forcefully directed to expensive terminals which carriers are obliged to maintain, especially in large cities. A great proportion of such terminal properties is devoted to freight service. Great warehouses and correspondingly expensive loading platforms and accessory facilities are given up to less-than-carload shipments. Every consolidation of these individual packages, or groups of packages, into carload quantities saves not only storage and handling facilities but

also car space. The latter is especially important during times of car shortage. The committee which worked out No. 51, even though it nowhere expresses it in so many words, was obviously aiming constantly at a better utilization of car space. A liberalization of mixtures in the classification and the resulting consolidation of small shipments into carload lots will tend directly to a better utilization of car space and the saving of investments in railway terminals and their operation.

FORMER DECISIONS BEARING UPON CLASSIFICATION.

The elements of classification have been discussed so many times by the Commission that nothing more is required here than reference to its past utterances.

In *Pyle & Sons v. E. T., V. & G. Ry. Co.*, 1 I. C. C., 465, 473, the Commission said:

In grouping articles together in a class for the purpose of fixing rates upon these articles several considerations are usually deemed by the carrier of a very controlling nature. Among these may be mentioned bulk and space occupied, value, hazardous and extra-hazardous freight, liability to waste or injury in transit, weight, or the like.

In *Thurber v. N. Y. C. & H. R. R. Co.*, 3 I. C. C., 473, 510, the Commission said:

A classification is not a fixed condition to which other interests must necessarily yield. It is the creation of carriers for their own and the public convenience, and may be changed by its creators. If not compatible with the public interests, it should be modified to subserve those interests.

In *Warner v. N. Y. C. & H. R. R. Co.*, 4 I. C. C., 32, 39, it was held that:

Both the market value of the commodities and the volume of business they furnish to carriers are proper elements to be considered in the classification.

In *Harvard Co. v. Pennsylvania Co.*, 4 I. C. C., 212, 223, the evidence showed that the controlling conditions determining the classification of goods by the official classification committees were bulk and space occupied, the weight of the package as compared with its dimensions, the value of the goods, the volume of traffic, and whether the goods could be loaded in a car so as to get a full carload. In this case the Commission held:

That a reasonable, fair, and just difference may be made in proportion to quantity hauled of the same article in a full carload and in less-than-carload lots, and respective rates charged upon each according to weight, is a principle that has been often recognized by the Commission. That a rate maker may, and in fact should, take into consideration * * * such controlling conditions, in preparing a classification, as bulk and space occupied, the weight of the article as compared with its dimensions, its value, whether it can be so loaded into a car as to make a full carload, and whether as a matter of fact it is hauled in carloads as well as in less than carloads, are each and all true. But

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the mere fact that one article, for example, sewing machines, is shipped "in greater quantities" than surgical chairs, when each as a rule is shipped in less-than-carload quantities, and of no large difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, that this alone should constitute in itself any reason why the former should enjoy lower rates or classification than the latter, merely for the reason that they are shipped "in greater quantities" is a doctrine to which we can not give our assent. In such a case mere quantity not measured by a recognized unit of quantity adapted to carriage and lessening the expense of handling by carriage, can not be allowed to affect rates in the transportation of property.

In *Coxe Bros. & Co. v. L. V. R. R. Co.*, 4 I. C. C., 535, 558, the Commission said:

For convenience in making transportation rates and charges, freight is arranged and put into different classes according to expense of carriage, bulk, value, risk, competition, and other considerations affecting the cost and value of the transportation service.

In *Page v. D., L. & W. R. R. Co.*, 6 I. C. C., 548, 565, it was held:

The elements of bulk, weight, value, and character are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.

In *Myer v. C., C. & St. L. Ry. Co.*, 9 I. C. C., 78, 83, it was stated by the Commission:

It has been repeatedly claimed by carriers and repeatedly held by the Commission that in the forming of a classification bulk, value, liability to damage, and similar elements affecting the desirability of the traffic should be considered, and that analogous articles should ordinarily be placed in the same class * * *. Manifestly in determining what freight rates shall be borne by different commodities an attempt should be made to obtain a fair relation between those commodities, and a classification which utterly ignores all considerations of this kind or which utterly fails to give due weight to such considerations is unjust and unreasonable.

In *National Hay Asso. v. L. S. & M. S. Ry. Co.*, 9 I. C. C., 264, 307, the Commission said:

In a classification such as the official, which contains but six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in the elements of character, use, value, volume, bulk, weight, risk, and expense of handling, which have so often been referred to as governing conditions in freight classification. Besides these general considerations affecting classification, competition is often an important factor. Such competition includes not only that between carriers, but also that of a commodity produced in one section with the same commodity produced in another section, and sometimes the competition of one kind of traffic with another.

In *Procter & Gamble Co. v. C. H. & D. Ry. Co.*, 9 I. C. C., 440, 482, the Commission held:

Freight classification is based upon the relations which commodities bear to each other in such respects as character, use, bulk, weight, value, tonnage or volume, risk, cost of carriage, ease of handling, and controlling conditions caused by competition.

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In *Planters' Compress Co. v. C., C., C. & St. L. Ry. Co.*, 11 I. C. C., 382, 405, the Commission held:

No classification can be so minute as to conform to the different varieties and conditions of traffic. To separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification, as was held by the Commission in *Derr Mfg. Co. v. P. R. R. Co.*, 9 I. C. C., 648.

In *Stowe-Fuller Co. v. Pennsylvania Co.*, 12 I. C. C., 215, 220, the Commission held:

Classification must be based upon a real distinction from a transportation standpoint. * * * To hold otherwise would be to promote false billing on the part of shippers, and to require the carriers, if they would avoid the penalty of the law, to make a practically impossible examination into the use to which each shipment of these brick was put.

In *Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co.*, 13 I. C. C., 651, 655, the Commission said:

In *Stowe-Fuller Co. v. Pennsylvania Co.*, 12 I. C. C., 215, we held that classification must be based upon a real distinction from a transportation standpoint. The Commission can not regard a classification as scientific or a difference in rates as well based which is altogether founded upon a distinction that has no transportation significance. Such a differentiation would lead to an almost endless multiplication of rates, which could find no excuse save the use which might be made of the article transported.

In *Metropolitan Paving Brick Co. v. Ann Arbor R. R. Co.*, 17 I. C. C., 197, 203, the Commission said:

It is well settled that in making a classification of articles bulk, value, liability to loss and damage, and similar elements affecting the desirability of the traffic should be considered, and articles which are analogous in character should ordinarily be placed in the same class. * * * Carriers, within proper limitations, may take competition into consideration in classifying freight. Competition that may be considered in proper cases not only includes that between carriers, but also that of the commodity produced in one section of the country with the same commodity produced in another section, and sometimes competition of one kind of traffic with another kind.

In *Forest City Freight Bureau v. A. A. R. R. Co.*, 18 I. C. C., 205, 206, the Commission held:

Classification is not an exact science; nor may the rating accorded a particular article be determined alone by the yardstick, the scales, and the dollar. The volume and desirability of the traffic, the hazard of carriage, and the possibility or probability of misrepresentation of the article are considerations of prime importance in classification. At best it is but a grouping, and when the approximation resulting from it is not found to cause the exaction of an unreasonable or discriminatory charge it will not be disturbed.

In *In re Advances on Coal*, 22 I. C. C., 604, it was held by the Commission that its power over classification of freight necessarily involves "considerations of the value of service given to the shipper, as well as the cost and value of the service furnished by the carrier."

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RULES OF THE CLASSIFICATION.

Having now discussed some of the larger and more fundamental general questions involved in this proceeding, except the question of minima, which can be considered to better advantage in connection with the rules, attention will be directed to the individual rules in controversy, and this will be followed by a discussion of the individual items in No. 51 to which objections have been raised. In connection with the discussion of both rules and items the application of the general principles discussed above will receive additional consideration.

WESTERN CLASSIFICATION No. 51.

RULES.

No. 50.

No. 51, rule 1.

The first two paragraphs of this rule are excerpts from section 10 of the act to regulate commerce concerning penalties for false billing, false representation, etc., and take the place of rule 3 in classification No. 50, which was to the general effect that when articles were improperly classified the agent at destination should collect charges upon the proper classification basis.

The third paragraph of the rule provides for inspection of shipments when carriers' agents deem it necessary, and is as follows:

"When agents of the carriers believe it necessary that the contents of packages or cars be inspected, they shall make or cause such inspection to be made, or require other sufficient evidence to determine the actual character of the property."

Objection was made to the quoted part of the rule that often rates were raised at destination on the ground that improper containers or crates had been used. It is contended that the propriety of the container or crating should be determined at the point of origin and not at destination. We think this contention is meritorious. However, that portion of the rule above quoted has for its aim the determination of "the actual character of the property." According to the complaints filed this has been construed to apply to containers. Under conference Rulings Nos. 16 and 156 it is the duty of the delivering carrier to collect the lawful rates on prepaid shipments and to correct any errors that may have been made by the agents of the initial carrier in billing or in the collection by the initial carrier

of the prepaid charges. This includes misbilling due to a wrong description of the container. The objections raised will, however, be met by inserting a provision to the effect that, if the classification of a shipment is properly raised at the point of destination, by reason of the character of the container, the initial carrier shall be liable for the difference, unless misrepresentation was made.

Every effort of the carriers to compel accuracy and honesty in descriptions of freight deserves support. Inadvertent and unknowing misdescriptions are unfortunate in their possible discriminatory effect, conscious misrepresentations and misdescriptions are criminal and should be rigorously suppressed.

No. 50.

No. 51, rule 2, page 2.

SECTION 1. When invoice value is made a condition of the ratings shown in this classification, the following clause must be entered in full on the shipping order and bill of lading and signed by the shipper:

For the purpose of enabling the carrier to apply the lawful rate as provided in its classification and tariffs, I (we) hereby declare that the invoice value of the property herein described does not exceed the value as stated, which the carrier, at its option, will be permitted to verify from my (our) records, and I (we) will not present claim for any cause against the carrier on a higher basis than invoice value.

(Shipper's signature.)

SEC. 2. When invoice value is not obtainable, the following will govern:

When value declared by shipper is made a condition of the ratings shown in this classification, the following clause must be entered in full on the shipping order and bill of lading and signed by the shipper:

For the purpose of enabling the carrier to apply the lawful rate, as provided in its classification and tariffs, I (we) hereby declare that the value of the property herein described is the value as stated, which is accepted by the carrier as the real and true value, and I (we) will not present claim for any cause against the carrier on a higher basis of value.

(Shipper's signature.)

The state commissions suggested the following as section 3 of the rule:

Section 3. It shall be the duty of the agents of the carrier to present the clauses referred to in the foregoing sections in written or printed form to the shipper for his signature, and if the said shipper refuses to sign the same then the higher ratings shall apply, and the agent shall note said refusal on said shipping order and bill of lading; and if the agent fails to present the same to said shipper for his signature, or fails to make the notation on the shipping order and bill of lading, then the lower rating shall apply.

Under the rule as it appears in No. 51, the burden is upon the shipper to secure the lower rate by making a declaration in writing of the invoice or actual value of the shipment offered. Upon his failure to do this the classification automatically applies the higher rate.

Under the provision suggested by the state commissions this process is reversed, and it is the duty of the carrier to direct the shipper's attention to the fact that there are two rates applicable upon the shipment, dependent upon the invoice or declared value, and thus give the shipper an opportunity to avail himself of the lower of the two rates.

The Commission has considered the principle of this rule in *Southern Cotton Oil Co. v. S. Ry. Co.*, 19 I. C. C., 79, where it held that:

It is the duty of the initial carrier not only to advise the shipper of the lower rates applying in case of release of valuation, but when informed of the shipper's desire to avail himself of such lower rates to obtain the shipper's signature in accordance with the tariffs.

This rule should be so reconstructed as to place upon the carrier the positive duty to first print these conditions, and not require the shippers to write them, and, upon the carrier's agent, the duty to notify the shipper of the alternative rates and present for his signature the necessary bill of lading to secure the desired rate.

No. 50, rule 25, page 15.

Carriers shall have the right to refuse to receive any freight offered for shipment which is likely to damage other freight or cars.

No. 51, rule 4, page 3.

The ratings in this classification do not obligate the carriers to receive freight liable to impregnate or otherwise damage equipment or other freight.

Such freight may be accepted and receipted for "Subject to delay for suitable equipment," or may for lack of suitable equipment be refused.

Objections to this rule have come chiefly from shippers of green hides. The carriers claim that experience has demonstrated the necessity of delaying these shipments, or even refusing them, when the hides are presented in an especially decomposed condition during

periods of extreme heat. The right and duty of carriers to protect other freight from commodities that are likely to do damage when coming in contact with other things can not be questioned. In the instant case objection was made particularly to the right of absolute refusal asserted in the rule. That certain perishable freight should at times be refused for sufficient reason seems reasonable, but we are not convinced of the reasonableness of refusing to receive green hides when carriers have the right, under tariff provision or the classification, to delay shipment for suitable equipment. We think the rule should be modified so as to eliminate the carriers' right to refuse shipments of green hides, when they are in proper condition for transportation.

No. 50, rule 6-A.

* * * Provisions for carload ratings shown in this classification will apply only upon shipments received in one day from one consignor under one bill of lading and delivered under one expense bill to one consignee. * * *

No. 51, rule 6-A, section 1.

Except as provided in rule 18, carload ratings apply only when a carload of freight is shipped from one station (one loading point) in or on one car (except as provided in rule 24) in one day by one shipper for delivery to one consignee at one destination. Only one bill of lading and one freight bill shall be issued for any such carload shipment. The minimum carload weight provided is the lowest weight on which the carload rating will apply.

It is objected that the term "one loading point" is ambiguous and might be so interpreted by the carriers as to restrict the loading of a car to practically one platform, although there were several loading points in the same city or town. The carriers disclaim any intention by this rule to restrict loading to "one loading point," but state that the object of the rule is to prevent the issuance of a bill of lading reading from more than one loading point. To relieve the rule of ambiguity the phrase "one loading point" should be eliminated and a specific statement be added that a bill of lading must be issued from one loading point only. The last sentence of the rule should be changed to read: "The minimum carload weight provided is the lowest weight on which the carload rating will be computed."

No. 50, rule 6-A.

Carload ratings will not apply on freight consigned to, or in care of, carriers' agents. Carriers' agents will not act as agents for shippers or consignees for the purpose of assembling, forwarding, or delivering less-than-car-

No. 51, rule 6-A, secs. 2, 3, and 4.

SEC. 2. Carriers' agents at points of shipment must not accept freight to be carried at carload ratings for distribution to two or more parties by carriers' agents at points of destination.

SEC. 3. Agents at points of destina-

load shipments in order to effect the application of carload ratings thereon. Less than carload ratings will apply on such shipments.

tion must deliver freight carried at carload ratings to one consignee only.

SEC. 4. If carriers' agents at destination distribute a carload shipment contrary to the foregoing, less-than-carload ratings will be applied on the entire carload.

Sections 2 and 3 are nothing more than written directions to agents at points of origin and destination not to accept or deliver carload shipments to more than one consignee. Section 4 then provides that if they disobey these orders and deliver to more than one consignee, less-than-carload ratings shall apply on the entire carload.

This punishes the shipper for the derelictions of carriers' agents. We can not approve such a rule. However, the last sentence of the rule in No. 50 should be changed to read as follows: "Less-than-carload ratings will apply to the entire shipment."

No. 50, rule 6-B.

Minimum weights provided in this classification will apply on all sizes of cars, except that premium and deduction charges will be applied to light and bulky articles designated by note as "subject to rule 6-B" whether loaded in box cars or on open cars.

Upon such light and bulky articles the standard car will be 36 feet in length, inside measurement, 3 per cent per foot to be added for each foot in excess of 36 feet and 3 per cent per foot to be deducted for each foot less than 36 feet, with a minimum of 91 per cent, all percentages to be based on inside dimensions. In applying premium and deduction charges, fractions of a foot, 6 inches or less, to be disregarded. (Table of percentages and minimum weights follows.)

No. 51.

No change in the wording of the rule, but by footnote to items in the classification it has been made applicable to over 250 additional items to which objection is made.

Since this rule has occupied such a conspicuous place in these proceedings, its origin and development may first be briefly noted.

The classification history of rule 6-B is as follows:

Western classification No. 1, effective April 1, 1887, provides for commodities which are now subject to rule 6-B, a flat minimum regardless of the length of the car. These minima were slightly higher than the minima now applicable to a standard car. The ratings were generally the same as now.

The "premium and deduction" charge was first introduced into western classification No. 21, effective September 15, 1895, where it

was applied only to specific commodities. For instance, buggies and light vehicles were given a third-class rating with minimum of 12,000 pounds for cars not exceeding 45 feet in length, outside measurement, subject to a deduction of 5 per cent per foot on cars less than 45 feet in length and an additional charge of 5 per cent per foot on cars exceeding 45 feet. In No. 31, effective January 1, 1901, buggies and light vehicles were raised to second class with the same minimum and premium and deduction charges. No. 33, effective April 1, 1902, established rule 6-C, which contained practically all the provisions now embraced in rule 6-B. The initial minimum, or the minimum for the standard car, was made somewhat lower in this classification than the flat minima which had been applicable theretofore on certain commodities. For example, on bank, store, and office furniture the flat minimum prior to April 1, 1902, was 12,000 pounds; on light vehicles it was 12,000 pounds. In No. 33 these were given a minimum of 10,000 pounds for a standard car of 36 feet in length and made subject to rule 6-C. These provisions were incorporated in rule 6-B of No. 34, effective October 1, 1902, which is the first time that rule 6-B with its present contents appeared in the classification. It has been continued from that time to the present.

Practically no objections have been raised to an increase in the minimum with an increase in the size of the car, especially in view of a somewhat general practice of carriers, confirmed by this Commission, to the effect that if a carrier, for its own convenience, furnishes a car of a larger size than the one ordered, or two smaller cars, the minimum applicable to the size of car ordered shall govern. The provision that the minimum applicable to the size of car ordered shall govern, should be made universal. With that purpose in view, a rule, in accordance with such practice should be included in the classification. The principle of increasing the minimum weight with an increase in the size of the car must be recognized as correct and as tending toward efficiency and economy in loading. Without such a provision the incentive is not always present to utilize car space to the fullest extent practicable. But having said this there remain two vital, fundamental problems, the one dealing with the size of the steps or gradations through which the minimum shall be advanced with increasing size of the car and the other having to do with what may be called the initial minimum applicable to shipments in the standard car and which constitutes the base of the sliding scale.

The steps of advance in rule 6-B are based directly upon increases in the length of cars, the rule providing an increase in the minimum weight for every linear foot. For all articles or commodities which by their shape, or lack of definite shape, are capable of being loaded into all classes of lengths, such a rule seems to fit exactly. It is obvious that for all classes of grain in bulk, for instance, the loading

capacity of the car increases directly with both its length and its cubical contents. Every addition to any one of the three dimensions means a possible increase in the weight of the load. This, however, is not true of articles that in their transportation form have certain rigid cubical dimensions. For boxes having dimensions of 1½ feet by 2 feet by 3 feet, an increase of 1 foot in the length of a car will not result in an increased loading capacity, for the reason that the package dimensions are not exact divisors of the increased car dimensions. The same suggestion would apply to articles like baled hay or straw, excelsior, and practically all other articles that have a general rectangular shape. In all such cases there is an increase in the loading capacity with an increase in the size of the car only to the extent to which the increased dimensions permit of an increased number of tiers of bales. This can happen only when the car dimensions are integral multiples of package dimensions. Fractions of packages can not be loaded generally. This class of articles must be very large, and a consideration of loading to the full capacity of the car would suggest that the scale representing increases in minimum with the increased size of the car should vary for different articles, the standard package for each commodity being used as the decisive factor in establishing the steps of the scale. It is apparent that shippers of hay will be obliged to adopt certain standard bales if such standards have not already been established, or pay for car space which they can not fill. It would be as unreasonable to expect carriers to work out sliding scales for a capricious variety of sizes of bales as it is reasonable, in our judgment, to adjust the scale of minima to the standard bale. We are therefore of the opinion that the principle of rule 6-B is just and proper, but that the form of expression of the rule must vary with the articles to which it is to be applied, using linear feet singly or in multiples or cubical contents as may best fit each commodity.

Having said this, we wish also to suggest that the restriction of the present rule to light and bulky articles is probably not defensible. There is very little in the record bearing upon this point, but a brief consideration of the controversies centering about rule 6-B suggests that some form of sliding scale should be made to apply to all articles, whether light and bulky, or otherwise.

The vital question then remaining relates to the initial minimum. What this shall be can only be determined by a careful investigation regarding each article. For light and bulky articles the initial minimum must clearly be less than it is for heavy articles; and it must vary with the different degrees of lightness and bulkiness. The graduate scale should be made to apply whenever the minimum fixed is equivalent to the loading capacity of the small car.

One of the big things in the present controversy relates to agricultural implements. Since 1887 the western classification has carried agricultural implements at the following minima:

	Pounds.
No. 14, effective January 1, 1887.....	20,000
No. 19, effective January 1, 1895.....	24,000
No. 21, effective September 15, 1895.....	20,000
No. 45, effective November 1, 1908, I. C. C. No. 3.....	24,000

The latter minimum having been carried forward in succeeding issues to the present time.

As noted above, No. 51 makes rule 6-B applicable to the minimum of 24,000 pounds; and chiefly out of this application have arisen the many complaints of the agricultural implement people. While the classification has provided this minimum of 24,000 pounds, the western trunk line rules, under which practically all these shipments have moved for an indefinite period past, have provided for a minimum of 20,000 pounds. Only one construction can be placed upon this action of the western trunk line carriers, namely, that in their judgment the minimum provided by the western classification was too high and that under the conditions prevailing in the various territories which the western carriers serve 20,000 pounds was the proper minimum. Upon the present record we are not convinced that 20,000 pounds, so long recognized by western carriers, is no longer proper. On the contrary, we think that the proposed application of rule 6-B to a minimum of 24,000 pounds has not been justified and that the initial minimum for the application of this rule, or some acceptable modification of it, on shipments of agricultural implements should be 20,000 pounds for a 36-foot car.

In this connection much was said regarding a commercial minimum as opposed to or contrasted with the physical minimum. The physical minimum is that minimum which represents the weight or bulk quantities which can be loaded into a car from the point of view of space or the theoretical number of packages capable of being loaded into a car, determined by dividing the cubical contents of the car by the cubical contents of one of the packages, multiplied by the weight of the package, possibly with some consideration of the dimensions of the package. The commercial minimum is that minimum which represents the unit of purchase and sale of the commodity in question as established by custom and the conditions existing in that trade and in the territory in which it governs at the time the minimum was established. The physical minimum would consider only physical loading capacity, while the commercial minimum would consider in addition trade requirements, conditions of manufacture, distribution, and consumption. While there doubtless are many commodities to which a rigid physical minimum test may be applied without hardship to anyone, there are many others to

which such a test can not fairly be applied. Even in the case of a heavy commodity, like coal, to which the physical minimum rule might be supposed to be applicable quite as generally as to such articles as crushed stone and iron ore, an excessively high minimum, say of 80,000 pounds, would prevent the shipping of coal in carload lots to many small communities. For purposes of illustration it might be assumed that a certain carrier had discarded all equipment except cars of 80,000 pounds and over, and that it had established a minimum on coal of 80,000 pounds. The result of this would inevitably be that every small community along the line of that carrier would be compelled to ship in its coal in less-than-carload quantities and at less-than-carload rates. This whole question has centered, so far as this proceeding is concerned, primarily around agricultural implements. It may be helpful to make a similar assumption regarding this class of traffic. Will it be supposed for one moment that agricultural implements would be shipped in carload lots with a minimum of 80,000 pounds to any but the largest distributive centers? This is a somewhat violent assumption, because the gap between the 24,000 pounds in classification No. 51 and 80,000 pounds is a great one, but it drives home the point that mere physical capacity can not in fairness be permitted to govern universally. This Commission has constantly to deal with situations alleged to be comparable with or to arise out of commercial conditions. If individual rates, with respect to which the Commission is required to make orders, or which the carriers establish, may be determined, as they have been, by so-called commercial conditions, why should not minimum weights be affected and established in the light of these same conditions? It is our conclusion, therefore, that carriers should take into consideration both the physical minimum and the commercial minimum in deciding upon a classification minimum to govern carload shipments throughout the country and provide themselves with cars of corresponding sizes. What these shall be must be determined in the light of all the facts applicable to each individual case. In their application to the specific case of agricultural implements, as suggested above, we are convinced that the minimum of 20,000 pounds, so long maintained by the western trunk lines, should be continued, subject to some proper sliding scale, until subsequent and more comprehensive investigations demonstrate the necessity and justice of making a change.

RULE 7.

Rule 7 of No. 51 supersedes rule 27 of No. 50.

This rule consists of two sections, and the second section has many subdivisions. Section 1 is merely introductory and to the effect that if the provisions of section 2 are not complied with the freight will not be accepted for transportation.

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The only portions of section 2 objected to are those below:

No. 50, rule 27, sec. A.

Each bundle, package, or piece of less-than-carload freight must be plainly, legibly, and durably marked, showing the name of the consignee (if "to order" full address of party to be notified must be shown), and the name of the station, town, or city, and the state to which destined.

No. 51, rule 7, sec. 2 (a).

* * * When consigned "to order" it must be so marked, and further marked with an identifying symbol or number which must be shown in shipping order and bill of lading.

This is an additional requirement of marking package with an identifying symbol to be shown also in shipping order and bill of lading. This portion of the rule is approved.

No. 50.

No. 51, rule 7, sec. 2 (a), note 2, par. 2.

Tags must be made of metal, leather, cloth, or rope stock or sulphite fiber tag board, sufficiently strong and durable to withstand the wear and tear incident to transportation; and

When such cloth or board tag is tied to any bag, bale, bundle, or piece of freight, it must be securely attached through a reenforced metal eyelet.

The parts quoted, as well as other parts, are new and more specific as to tags and marking requirements. Objection is made to the provision for metal eyelets.

The testimony shows that the use of a variety of tags has not resulted in substantial practical difficulties. Numerous kinds of tags appear to be sufficiently strong and generally satisfactory. The use of inferior, insecure tags rightfully should be prohibited, but nothing has been brought to our attention which would justify the arbitrary requirement of metal eyelets at an additional expense of 15 cents per thousand. We must disapprove this feature of rule 7.

No. 50.

No. 51, rule 7, sec. 2 (e).

Freight in excess of full cars (see rule 24) must be marked as required for less-than-carload freight.

This requirement is objected to where the overflow exceeds 6,000 pounds. Some of the shippers claim that when a given size of car is ordered but the carrier is unable to furnish it and therefore supplies a smaller car, that any overflow which results from the failure to furnish a larger car should be marked at the expense of the carrier. The carriers claim that this would be imposing an unreasonable burden upon them, especially when a car is sent to an industry track and

an overflow shipment results, in which event they would have to send an agent up to the industry track in order to mark the overflow.

The state commissions suggest the following as a substitute rule:

Freight in excess of full cars (see rule 24), when the carrier has furnished the size of car ordered, must be marked by the shipper as required for less-than-carload freight, if the said excess is less than 6,000 pounds; when the said carrier has failed to furnish the size of car ordered, then the said excess, if less than 6,000 pounds, must be marked by the carrier as required for less-than-carload freight.

The rule as it appears in No. 51 provides that the overflow, no matter how large, must be marked by the shipper as is less-than-carload freight.

It appears to us that the burden of marking overflow shipments should not fall on either party exclusively. Shippers having knowledge of the volume of shipments should be charged with the responsibility of ordering cars of proper size, and carriers with the duty of furnishing cars of the size ordered. Overflow shipments result when either or both parties fail for any reason to meet their respective duties and responsibilities in this respect. "Follow lot" shipments should be marked by the shipper of the "follow lot," whenever they constitute an overflow, resulting from the failure of the shipper to designate the dimensions of cars required for his shipment. But where the shipment could be loaded in a car of the size ordered by the shipper and two cars are furnished by the carrier, the marking, where necessary, should be done by the carrier.

No. 50.

No. 51, rule 8, secs. 6 and 7.

Section 6. * * * Wooden boxes of unusual size or carrying unusual weight must be strapped or be reenforced by cleats.

Sec. 7. * * * Crates of unusual size or carrying unusual weight must be strapped or be reenforced by cleats placed diagonally. Crates in circular form must be reenforced at ends by metal or wooden hoops securely fastened to the package.

Sec. 8 (a). Pails, firkins, kits, and tubs must be made of wood or entirely of iron or steel, except as provided in Rule 42-B, and—

(b) This refers to securing tops for iron or steel pails, etc.

(c) This refers to securing wooden tops on wooden pails, etc.

(d) This refers to securing metal tops on wooden pails, etc.

(e) This refers to exception for wooden tubs.

Both sections are new. Objections came from many quarters, chiefly on the ground that the provisions are too general and indefinite, and consequently too much is left to the personal judgment of the individual agent. We think there is much force in this contention. In a matter like classification, where difficulties bristle at every turn, some description or indication of what constitute "unusual" weights or sizes should not be one of the greatest of them, and in that manner the range of the agents' exercise of personal choice be reasonably restricted to accepted methods.

It is represented in the record that section 8 would make useless large quantities of wooden packages which have not been shown to be improperly defective in actual experience. The necessity of securing various of these classes of packages in the manner required under the proposed rule has been challenged. Carriers have an undoubted right to demand and insist upon secure packages for the protection of the commodities contained in them, as well as for the protection of other freight. This is in the public as well as private interest.

No. 50, rule 30.

The term "nested," as used in the classification, covers a series of two or more like articles fitting one within another.

No. 51, rule 10, section 1.

The term "nested," used in package specifications in this classification, means that three or more different sizes of the article for which the "nested" specification is provided must be inclosed each smaller within each next larger; or that three or more of the articles, for which the "nested" specification is provided, must be placed one within the other so that each upper article will not project above the next lower article more than one-third of its height.

SEC. 2. The provisions shown in section 1 of this rule prohibit the application of "nested" ratings when articles of different name or material, whether grouped in one description or shown separately, are nested or inclosed one within the other.

The purpose of the change in this rule is described in the carriers' brief as follows:

It is understood, of course, that the purpose of the rule is to insure a heavy loading of the car, thereby reducing cost and increasing available equipment.

Carriers have not justified this rule and we, therefore, disapprove it.

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No. 50, rule 5.

When parts or pieces constituting one or more complete articles are offered to carriers for transportation at one time by one shipper to one consignee and destination, they will be rated at the classification provided for the complete article, whether set up or knocked down, as specified in the classification.

No. 51, rule 15.

Parts or pieces constituting a complete article received as one shipment will be charged at the rating provided for the complete article.

If the new rule is construed to mean that one shipment is offered under one bill of lading, we do not think that valid objections can be made to it. If, however, it is construed so as to deny to a shipper the right of shipping, for instance, iron bars which happen to be a part of some machine as iron bars under a separate bill of lading, we think that such an interpretation would be unwarranted and unjustly discriminatory. If a shipper is willing to go to the trouble of separating a "completed article" into its constituent parts and meet the established shipping requirements with reference to each part, we see no reason why he should not do so and we do not think that he can lawfully be prevented from exercising his choice in that direction. On the other hand, if all the pieces constituting a completed article are offered as one shipment, under one bill of lading, the freight charge should be calculated upon a rating for the completed article.

No. 50.

No. 51, rule 16.

Unless otherwise provided, minimum charge for a single shipment of less-than-carload freight will be 100 pounds at first-class rate, but in no case less than 25 cents.

No. 50 carries no minimum-charge rule, that matter being taken care of in the individual tariffs of carriers.

Most carriers in the west have carried a minimum charge based upon third-class rates, with a minimum of 25 cents.

The southern classification provides for a minimum charge of 100 pounds at the class or commodity rate for the article in question, but in no case less than 25 cents.

Official classification provides for a minimum charge of first-class rate, but in no case less than 25 cents.

The proposed rule is substantially identical with the corresponding rule which has been in effect in official classification for a long time. Upon the argument of this case the chairman of the western classifi-

cation committee expressed his willingness to substitute for the proposed rule the corresponding rule in the southern classification, and thus provide for a minimum charge of 100 pounds of the class or commodity to which the article belongs, but in no case less than 25 cents. The proposed change is approved.

No. 50, rule 15.

The amount charged for less than a carload of freight should not exceed the charges on a minimum-carload weight of the article.

Rule 18. (b) Consignors and consignees will be required to load and unload all freight upon which carload ratings are applied. If, in the instance of shipments tendered in less-than-carload lots, but upon which the carload rate and minimum is applied as provided in rule 15, such service is performed by carrier's agents, a charge of one and one-quarter ($1\frac{1}{4}$) cents per hundred pounds will be made for loading and a like charge for unloading.

No. 51, rule 18, section 1.

The charge for a less-than-carload shipment must not exceed the charge for a minimum carload of the same freight at the carload rating, provided the loading is performed by the consignor and the unloading by the consignee.

It is the right of the shipper to have the benefit of the carload rate whenever the amount of freight which he offers for shipment at one time equals the minimum weight provided for that commodity. Inadvertence, lack of information, confusion, and carelessness on the part of shippers or carriers' agents may result in shipping carload quantities at less-than-carload rates. Carload quantities should not be received in freight houses for the obvious reason that carload rates do not cover that service and that storage space should be reserved for less-than-carload shipments. But when, for any sufficient reason, a carrier has actually stored and handled carload quantities as it stores and handles less-than-carload quantities it is entitled to fair compensation for the additional service performed. We are aware that the cost of handling less-than-carload freight varies in different localities, and that any fixed rate of pay for such work will be too small or too great, depending upon the circumstances. However, since these are exceptional and accidental rather than regular services, we think that some fair average figure should be adopted. This figure has been $1\frac{1}{4}$ cents per 100 pounds for some time past, and we think it may well be allowed to stand for the future. Rule 18 should be modified to include this feature in substance as it stood in Classification No. 50.

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No. 50.

Rule 17-B of classification No. 50 is in the same language.

No. 51, rule 20-B.

An article too large to be loaded through the side door of a 38-foot box or stock car, or too long to be loaded through the end window thereof, shall (unless otherwise specified in the classification) be charged actual weight and class rate, provided that in no case shall the charge for the entire shipment be less than 5,000 pounds at first-class rate.

This is one of a number of rules brought into this proceeding in which no change was made in No. 51. It is mentioned in this place merely to call attention to the decision of the Commission in the case of the *Brunswick-Balke-Collender Co. v. A., T. & S. F. Ry. Co.*, 23 I. C. C., 395, in which the subject matter of this rule is discussed and a modification of the rule ordered. Further investigation of the decision reached in this case has been ordered. In the meantime, the rule should stand as therein modified.

No. 50.

Carload ratings shown in the classification for "articles subject to rule 21-B," will not apply on straight carloads of the articles named. In such cases the amount of the article so designated which may be included shall not exceed 33½% of the minimum weight provided for the mixed carload.

No. 51.

Carload ratings shown in the classification for "articles subject to Rule 21-B," will not apply on straight carloads of the articles named. In such cases the amount of the articles so designated which may be included shall not exceed 33½% of the minimum weight provided for the mixed carload.

It will be observed that the rule in No. 51 is identical with that in No. 50, except that "article" has been changed to "articles."

Official classification, No. 38, item 10, p. 40, grants fifth-class rating, based upon minimum weight of 24,000 pounds, subject to rule 27, "provided that not more than 20 per cent of the total weight of the entire shipment consists of the articles named," to which is attached a carload minimum weight greater than 24,000 pounds.

The objection to this rule is that the 33½ per cent applies to the minimum weight provided for the mixed carload while it is claimed that it should apply to actual weight.

While the rule is substantially the same in No. 51 as in No. 50, it is made applicable to articles in No. 51 to which it was not applicable in No. 50, and in this manner its effect upon the public has been widened.

The change of the word "article" to "articles" is also to be noted.

In classification No. 39, "articles" was used. In No. 40 the "s" was dropped and not reinstated until No. 51 was issued. As the rule 25 I. C. C.

now reads, in a case where three articles are grouped together and allowed to be mixed, carrying a 36,000-pound minimum, when this group of articles is subjected to rule 21-B and allowed to be mixed with other articles, the new mixture carrying a 24,000-pound minimum, then not to exceed $83\frac{1}{3}$ per cent of 24,000 pounds, or 8,000 pounds, of this group with the 36,000-pound minimum may be included in the mixed car of 24,000 pounds. It is argued that if this were not the rule, then, under the pretense of making up a mixed carload of 24,000 pounds, the 36,000-pound mixed carload minimum could be defeated. This is substantially the carriers' contention.

The shippers contend that even though this might occur, they suffer from not being allowed to put in one-third in weight of any single article. In other words, if they actually load a mixed car with 54,000 pounds, they desire the privilege of putting into that car not to exceed 18,000 pounds of any one article.

One of the chief aims of this rule is said to be the protection of the minimum and the rate. We are inclined to think that this can be accomplished without going the full length of the proposed rule. By requiring a substantial minimum to be loaded of each commodity in the mixture it would become impossible to defeat the minimum weight requirements of the others by including in the shipment a nominal quantity of one. We think that by striking out from the rule as it stands in No. 51 the word "minimum" and inserting a provision like the one suggested, the interests of all parties might be protected.

No. 50.

No. 51, rule 22, sec. 1.

Owners are required to load and unload all freight carried at carload ratings, except as provided in rule 24, section 5.

This is a new provision. Questions involved in it have been discussed in rule 18 above, to which reference is here made.

No. 50.

No. 51, rule 22, sec. 2.

Owners are required to load and unload heavy or bulky freight carried at l. c. l. ratings that can not be handled by the regular station employees, or at stations where the carrier's loading or unloading facilities are not sufficient for handling.

Objection is made to this provision as imposing a burden upon the shipper which should be borne by the carriers. The latter justify the rule on the ground that at many small stations there are no facilities for handling heavy articles like bridge girders, etc.

One witness stated that not much hardship would result from this rule, because most consignees prefer to unload their bulky shipments.

Large, heavy, bulky less-than-carload shipments are probably relatively few in number, and it would hardly be in the public interest to require carriers to load or unload such exceptional shipments at any one of the thousands of stations in this country where they do not, and can not, maintain crews capable of handling consignments of this character. The rule lacks definiteness, which it is probably difficult to correct. We think that carriers should advise shippers at the time shipments are received what is expected of them with respect to loading and unloading. This rule, like all others, must have a reasonable interpretation; if shippers should suffer under it, the Commission can take care of such cases as they may arise. It must be assumed that section crews will assist shippers wherever possible and practicable, but we do not deem it in the public interest to require carriers in all cases falling under this rule to place their section crews at the disposition of shippers. The rule as it stands is worthy of a fair trial.

No. 50.

No. 51, rule 23.

Freight loaded by shipper and not checked by carrier must be receipted for "Shipper's load and count."

The carriers contend that it is unreasonable to demand clear receipts for carload freight loaded at warehouses or private sidings of shippers and that the practice would bring about an unnecessary increase in the cost of operation by reason of the necessary labor that would be required to check all carload freight loaded at such places as best suited the shipper's convenience.

The ordinary bill of lading is a receipt for the quantity or weight of the goods received for shipment. This receipt, as between the original parties to the bill, is prima facie evidence of the truth of the statements contained therein. Recitals of quantity and weight of the articles received are not, however, conclusive, and the carrier is not estopped from showing that the amount or quantity stated was never, in fact, delivered to him for transportation. *Porter on Bills of Lading*, sec 14, p. 9; *Hutchinson on Carriers*, 3d ed., secs. 157, 158, pp. 163, 164.

When, however, a bill of lading contains such qualifying words as "weight and contents not known," or words to like effect, the burden would be upon the shipper in an alleged failure to deliver the whole amount shipped, to show the quantity delivered for transportation. *Porter on Bills of Lading*, sec. 60, p. 40, and *Hutchinson on Carriers*, 3d ed., sec. 165, p. 172.

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The bill of lading, however, is something more than a contract between the carrier and the shipper. It is usually intended to constitute a representative of the goods, and stands for them, so that a transfer of the bill is a transfer of the goods themselves, and therefore when a carrier issues a bill of lading containing a statement as to the quantity of the goods received, with the understanding that the goods may be transferred by means of the transfer of the bill of lading, the transferee is justified in relying on the representations of the carrier made in the bill with reference to the quantity of the goods received under it, and as to one who receives the bill in good faith, relying on a statement of quantity, and pays a consideration, the carrier is estopped from showing that he has not received the quantity of goods recited in the bill. To guard against such estoppel the carrier may insert in the bill of lading "quantity, weight, and contents unknown," or some like clause qualifying his representation, and in that event he will not be liable to an assignee for the value if he delivers all the goods received. *Cyclopedia of Law and Procedure*, vol. 6, p. 416, and cases cited.

The Commission has dealt with the question of "shipper's load and count" only from the standpoint of the record in the case of *Ponchatoula Farmers' Assn., Limited, v. I. C. R. R. Co.*, 19 I. C. C., 513, at 521, where it is stated:

Perishable articles, such as complainant ships, must be handled by the carrier with all possible dispatch in order to be properly marketed. To require the carrier in a traffic of this description to count the packages tendered for transportation would in many instances retard the shipment and impose an additional burden upon already overburdened station agents without resulting in a compensating advantage to the shipper. Where the shipments are in straight or mixed carloads, which constitute a large majority of complainant's shipments, the cars are sealed at point of origin and should go to destination with seals unbroken. Upon the record the Commission can not say this practice is unreasonable or that it results in defeating the published rates.

As this subject is covered by pending legislation of Congress fixing the liability of the carriers, the Commission does not wish at this time to make any recommendation in regard to the rule.

No. 50, rule 8.

When the minimum carload weight or more of one article is shipped in one day by one consignor to one consignee, covered by one bill of lading, the established rate for a carload shall apply on the entire lot, although it may be less than two or more full carload lots. The first car or cars must be loaded to their full capacity, and are subject to established rules for minimum weights,

No. 51, rule 24.

SECTION 1. When carload freight (see Section 7 for exceptions), the authorized minimum weight for which is 30,000 lbs. or more, is received in excess of the quantity that can be loaded in or on one car, the following rules shall apply:

SEC. 2. The shipment must be made from one station (one loading point, except as provided in Section 5 of this

the actual weight of the balance, provided it is loaded in a box car, to be charged for at the carload rate, reference being made on the waybill for the balance of the lot to the waybill for the full carload or loads. This is intended to apply on all articles that are classified in both less than carloads, and in carloads in the numbered and lettered classes, except on carload freight taking minimum weights of less than 80,000 lbs., carload freight subject to rule 6-B and shipments of agricultural implements (including hand implements), vehicles, parts of vehicles, live stock, furniture, lumber, articles taking lumber rates, sash, doors, blinds, scrap iron and junk, and all shipments any part of which is loaded in refrigerator or tank cars; in such cases excess lots will be charged for at less-than-carload rate.

rule), by one shipper, in one day, on one shipping order or bill of lading, to one consignee and destination.

SEC. 3. Each car, except the car carrying the excess, must be loaded to visible or marked capacity, and each car so loaded charged at actual or authorized estimated weight, subject to established minimum carload weight, and at the carload rating applicable.

SEC. 4 (a). The excess over the quantity that can be loaded in or on one car shall be charged:

(b) If loaded in one closed car, at actual or authorized estimated weight, and at the carload rating applicable on the entire shipment.

(c) If loaded on one open car at actual or authorized estimated weight and at the carload rating applicable on the entire shipment—subject to a minimum charge of 5,000 lbs. at first-class rate.

SEC. 5. Carriers may handle the excess through freight stations, and may load other freight in or on car carrying the excess.

SEC. 6. The waybill for each car whether for the excess or full load, must give reference to the waybill for each other car used in the shipment.

SEC. 7. This rule will not apply when specific items in this Classification provide otherwise; nor on bulk freight, live stock, furniture, lumber, articles taking lumber rates, sash, doors, blinds, scrap iron or junk—nor on freight the character of which requires, at the time of transportation, either heated, refrigerator, ventilator or tank cars, or cars specially prepared either by the carrier or shipper nor on freight the authorized minimum carload weight for which is less than 80,000 lbs.

SEC. 8. Freight in excess of full cars must be marked as required for less-than-carload freight. (See Rule 7.)

Rule 24 of classification No. 51 is substantially the same as rule 8 of classification No. 50, both of which provide, among other things, that the "follow-lot" provision shall apply only where the minimum

is 30,000 pounds or over. However, from pages 111 to 123 in classification No. 50, which embraces the entire "machinery" list, there is the following note:

Rule 8 will apply on shipments of machinery taking carload minimum weights of 24,000 pounds and over.

The effect of this is to allow follow lots on machinery where the minimum is 24,000 pounds. Under No. 51 machinery would not have the advantage of the follow-lot rate except where the minimum is 30,000 pounds or more. We do not believe that it is unreasonable to restrict the "follow lot" privilege to machinery where the minimum is 30,000 pounds or more.

In connection with the provision, in section 2, requiring shipments to move from one loading point, we refer to our determination in connection with Rule 6-A, section 1, which should be made applicable in this instance, as well.

No. 50, rule 13.

An allowance, not to exceed 500 pounds, will be made for racks, standards, strips, supports, and blocks furnished by shippers on flat or gondola cars loaded with freight requiring their use. Provided, that in no case shall less than the specified minimum weight be charged on the property. (See Rule 1-B.)

Companies will not be responsible for removal of or damage to temporary racks or blocks, and it will be optional with them to remove or return them to shippers if not taken by consignees.

No. 51, rule 27.

Temporary blocking, racks, standards, strips, stakes, or similar bracing, dunnage, or supports not constituting a part of the car, when required to protect and make secure for shipment property upon which carload ratings are applied, must be furnished and installed by the shipper, and at his expense, and the weight included with that of the property shipped.

The only change in rule 27 of classification No. 51 from rule 13 in classification No. 50 is that the 500-pound allowance for "dunnage" in the latter is not granted in No. 51.

Complainants who have interested themselves in this rule point to the long-standing practice of an allowance of 500 pounds in western classification and the allowance of 500 pounds, which is still made under the official classification, and 1,000 pounds under the southern. It is pointed out that materials embraced in dunnage cost money to the shipper and that they are generally lost or wasted with a single use, and therefore have no salvage value. It is also argued that these materials perform a service for the carrier, in that they make shipments more secure and to that extent reduce damage claims. It is also suggested that a discontinuance of the dunnage allowance will inevitably have a tendency on the part of shippers to reduce the

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weight of the materials thus used and consequently lessen the security of the shipments. We think there is much force in all of these arguments. It is unquestionably true that many of the expenses for dunnage are due to the inability of the carrier to furnish the kind of car desired by the shipper, and, rather than wait longer for the car he wants, he accepts the less desirable car, which he can get, and goes to the expense of fitting it. In this manner the shipper really contributes a part of the equipment which it is the duty of the carrier to furnish.

As an argument against the allowance for dunnage it is pointed out that shippers of other freight must pay freight on the weight of materials used in crating or boxing and in this manner they are being unjustly discriminated against. There is some force in this argument, but it seems to us that it is completely overshadowed by the other considerations which have been suggested. As a matter of sound public policy, as well as in the interest, in the long run, of both shipper and carrier, we think that the allowance of 500 pounds should be continued. This feature of rule 27 is disapproved.

Such a conclusion is in harmony with past holdings of the Commission.

It recognized the reasonableness of an allowance of 500 pounds from the weight of cars for racks, stakes, and blocks furnished by the shipper in flat and gondola cars loaded with freight requiring their use in *National Wholesale Lumber Dealers' Assn. v. A. C. L. R. R. Co.*, 14 I. C. C., 154.

In *Kaye & Carter Lumber Co. v. C., M. & St. P. Ry. Co.*, 14 I. C. C., 604, the defendant carrier had a tariff in effect which made no allowance for the weight of stakes used to secure the lumber on the cars. After the shipment had moved defendant amended its tariff so as to make allowance for 500 pounds for such purpose. The Commission held:

In view of the general practice of the carriers of allowing for the weight of car stakes, and the particular facts of this case, our conclusions are that the rate charged the complainant on the shipment in question was unreasonable in and to the extent that an allowance of 500 pounds per car was not made for staking; and that the complainant is entitled to reparation for the excessive charges assessed against it by reason of such failure to allow for the weight of the stakes.

Under facts which were substantially the same, the Commission decided in *Duluth Log Co. v. M. & I. Ry. Co.*, 15 I. C. C., 192 (same case, affirmed, 15 I. C. C., 627), that:

Complainant is entitled to an allowance of 500 pounds for stakes used in equipping the car for this shipment, and, therefore, to additional reparation.

In *Davies v. L. & N. R. R. Co.*, 18 I. C. C., 540, complainants objected to charges imposed by the defendant carriers for loading and 25 I. C. C.

furnishing material and placing dunnage on shipments of fruit and vegetables. The Commission held:

The service of loading, furnishing material and placing in cars is an additional service over and above transportation, for which carriers are entitled to receive reasonable compensation.

No. 50.

No. 51, rule 28.

Temporary lining or flooring, when required, must be furnished and installed in cars by the shipper and at his expense.

No charge will be made for the transportation of such material in the car with the freight it protects.

It will be noted that the latter part of this rule might be considered an exception to rule 27, where no allowance is made for dunnage.

Objection was made to the first paragraph on the ground that it was requiring shipper to furnish equipment that it was the duty of the carrier to supply.

No similar rule is found in No. 50. Exceptions to the classification embodied in the tariffs of individual carriers provide for the allowance, up to 2,500 pounds, for temporary lining and flooring when required, and that no charge will be made for the transportation of such material up to the maximum of the allowance. Western freight association's general rules and regulations, file No. 865, effective August 1, 1892, provides that stove and linings may be returned free when originally shipped with fruit and vegetables to protect them from frost. W. H. Hosmer's I. C. C. No. A-1, effective May 20, 1908, and subsequent issues also provide for the return of stoves and lining free.

No. 50, rule 10.

During cold weather, when perishable property is liable to be damaged by frost, a pass may be given to one person who may be in charge of and accompanying shipments of one or more carloads of green fruits, potatoes, or other vegetables, when a stove is used for the protection of such property from freezing. No return pass will be given. Passes will not be given to persons in charge of trees and shrubbery. When stoves requiring stovepipe are used, the stovepipe must be run through a board securely fastened at one side of the car door, and be fitted with an elbow projecting above the car not more than 24 inches; the woodwork must also be protected from fire by sheet iron or tin facing. The

No. 51, rule 30.

SECTION 1. Ratings provided for freight in carloads do not obligate the carrier to furnish heated cars, nor to maintain heat in cars, for freight requiring such protection, except under conditions which the carrier's tariffs provide.

SEC. 2. Stoves used in cars and the fittings and fuel therefor must be furnished by shipper, and the fuel must consist of coal, coke, or charcoal, unless otherwise permitted by regulations of individual carriers.

Stoves must be securely fastened and braced.

Stovepipes must be run through a board, protected with metal collar, securely fastened at one side of the doorway of the car and secured clear of

stoves and lumber used in fitting up the car may be returned at one-half fourth-class rates.

all woodwork, and fitted with an elbow and pipe projecting above the car not more than 24 inches.

Woodwork, where exposed to heat, must be protected by sheet metal.

Shippers must provide men to care for fires. Rules governing the transportation of caretakers will be found in carrier's tariffs.

No charge will be made for the transportation of stoves, fittings, or fuel in the car with the freight requiring such protection.

The purpose of the carriers in eliminating provisions permitting the return of car lining and stoves at one-half of fourth-class rates, as expressed at the hearing, was to get away from "return shipments" in the classification as far as possible. Theoretically this may be correct, but as a practical matter it is open to serious objection. If carriers could always provide shippers with refrigerator cars when needed, the change would conceivably be made without inflicting undue hardship. Potato shippers, especially, can not always secure refrigerator cars when they need them, and rather than wait they accept box cars, which they line at their own expense and fit up with a stove. Both the lining and the stove are therefore performing a service which refrigerator cars, under most weather conditions, would provide without extra expense to the shipper. Under these circumstances we think it is only fair and just that the shipper shall not be required to pay freight charges on lining and stoves in the loaded car, and that lining and stoves shall be returned to him with all practicable dispatch to the point of shipment at one-half fourth-class, as provided in No. 50, unless the exception sheets or individual tariff provide for free return.

The classification should either provide for the transportation of a necessary caretaker of perishable freight free of charge or require carriers to take care of stoves and replenish fuel in transit when such protection is required.

No. 50.

No. 51, rule 31.

Less-than-carload or any-quantity ratings will not apply on freight requiring protection against heat or cold and carried under refrigeration, or in refrigerator or lined cars, heater or heated cars, or cars otherwise specially equipped for such protection, except under the conditions which the carrier's tariffs provide.

This rule is intended to prevent less-than-carload shipments of perishable freight being delivered at the stations of carriers on days
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when they have no facilities for caring for it and to require carriers to publish service and rates in their tariffs. Cooled cars in the summer and heated cars in the winter have been provided quite generally, but, according to the record, this service has not always been governed by tariff provisions filed with the Commission. One purpose of this rule is to require publication on the part of all carriers, so that every shipper may know on what days in the week this service is being offered and at what rates. The rule may go into effect.

No. 50.**No. 51, rule 33.**

No charges of any description will be advanced to shippers, owners, consignees, or agents thereof, nor to draymen or warehousemen for shippers, owners, consignees, or agents thereof.

This is a new rule. It discontinues the practice of some carriers of advancing other than common-carrier charges. Protests have come chiefly from transfer, warehouse, and delivery companies on the Pacific coast and from jobbing centers in the Mississippi and Missouri valleys. It was admitted that the Commission could not compel carriers to advance such charges. The rule is approved, but this approval must not be construed as forbidding carriers to provide by their tariffs for the advancement of storage or transfer charges.

PACKAGE REQUIREMENTS.

In No. 50 many commodities are rated the same when shipped in bulk in barrels or boxes as when shipped in packages in barrels or boxes.

Rule 14 of No. 50 and its counterpart, rule 8 of No. 51, are constructed on the general principle that a higher rating should apply on an inferior or less secure package. One of the tendencies in No. 51 appears to be to apply a higher rating on commodities in packages in barrels or boxes than on commodities in bulk in barrels or boxes, notwithstanding the fact that shipments in packages in barrels or boxes afford a superior package for transportation. This application appears in some cases to be based on the theory that the same article in cartons or cans or glass, packed in barrels or boxes, is of a higher value than when shipped in bulk in barrels or boxes. In many instances the difference in value between the article shipped in bulk in barrels or boxes and the same article when shipped in packages in barrels or boxes is very small. Packing an article in fiber or metal cans or cartons in barrels or boxes, which is practically a double package, produces a more desirable package for transportation than when the article is shipped in bulk in barrels,

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boxes, or bags. From a classification standpoint, the security of a package may with propriety be considered when fixing the rating, and it is apparent that carriers are not justified in placing a higher rating upon a more secure than a less secure package, except, perhaps, in cases where articles known by the same name are, in fact, different commodities of widely different values. For example, charcoal, when shipped in bulk in barrels or bags, is a fuel; when packed in glass it is practically a drug. The obverse of this principle is equally true that the carrier may be justified in prescribing a higher rating on articles packed in a less than in a more secure package, or when loose or without proper protection.

Transportation charges may not be properly predicated upon the use to be made of an article offered for transportation. Whenever reference is made in this report to the use of an article, it is for the purpose of reaching some conclusion with respect to its relative value. The value of the article, not its use, is one of the determining factors in classification.

There are ratings on many commodities throughout the classification against some of which there have been specific protests, while against others there may have been no protests filed, except in a general way.

It is expected that the carriers will revise all such items in the classification, whether specifically mentioned in this report or otherwise, to conform to the principles above announced with regard to ratings on the safer and more secure packages. That is to say, where there is no marked or wide variation in the value of the same commodities when shipped in fiber or metal cans or containers when packed in barrels or boxes, the rating on such double packages should not be higher than the rating on the same commodity when shipped in bulk in barrels.

CHANGES IN INDIVIDUAL ITEMS.

We will now consider individual items of No. 51, regarding which testimony was submitted:

ACID, BORACIC, L. C. L.

No. 50, page 45, item 9.	No. 51, page 60, item 1.
Chemicals and drugs: Acid, boracic, in barrels..... 2	Acids, boracic: In glass or earthenware, packed in barrels or boxes..... 1 In fiber or metal cans or cartons in barrels or boxes..... 1 In bags..... 2 In bulk in barrels or boxes.... 2

Applying to boracic acid what has been suggested with respect of package requirements, we find that the carriers are not justified in 25 L. C. C.

prescribing a higher rating on boracic acid shipped in fiber or metal cans or cartons in barrels or boxes than when shipped in bulk in barrels or boxes, or in bags. We do not consider the change in the rating on boracic acid in glass or earthenware, packed in barrels or boxes, unreasonable. It appears from the record that the article which moves in this manner is chemically pure, of high value, to all intents and purposes a drug, and is rated the same as other drugs.

ACID, OXALIC, L. C. L.

No. 50, page 45, item 18.	No. 51, page 69, item 18.
Chemicals and drugs.—Acids, oxalic, in barrels or casks..... 2	Acids, oxalic: In glass or earthenware, packed in barrels or boxes..... 1 In fiber or metal cans or cartons, in barrels or boxes.... 1 In bulk, in barrels or boxes.... 2

For the reasons advanced with regard to ratings on boracic acid, we find that the carriers are not justified in prescribing a higher rating on oxalic acid in fiber or metal cans or cartons, packed in barrels or boxes, than when shipped in bulk in barrels or boxes. We do not consider the change in the rating on oxalic acid in glass or earthenware, packed in barrels or boxes, unreasonable.

ACIDS, MURIATIC, NITRIC, AND SULPHURIC.

No. 50, p. 45, items 16, 17, 20, and 28.	No. 51, p. 69, items 10, 12; p. 70, item 8.
Chemicals and drugs: c. l. Muriatic, in tank cars..... 4 Nitric, in tank cars..... 4 Sulphuric, in tank cars..... 4 N. o. s.: In carboys, minimum 30,000.. 4	Acids: c. l. Muriatic, in carboys, minimum 24,000, sub. to rule 6-B..... 3 Nitric, in carboys, minimum 24,000, sub. to rule 6-B..... 3 Sulphuric, in carboys, min. wt. 24,000 lbs., sub. to rule 6-B.. 3

No. 51 changed the rating from fourth class, with minimum of 30,000 pounds, to third class, with minimum of 24,000 pounds, and eliminated the mixture. Defendants have agreed to provide the fourth-class rating, with a minimum of 30,000 pounds, and to provide for the mixing privilege, which proposed change appears from the record to be satisfactory to complainants. Defendants will be expected to make the proposed change.

ACID, PYROLIGNEOUS.

No. 50, page 45, item 19.	No. 51, page 70, item 2.
Chemicals and drugs.—Acids, pyroligneous, in barrels..... 4	Acids, pyroligneous, in barrels, L. C. L. 3

The rating on this commodity is changed from fourth to third class in No. 51. In the record it is shown to be similar to creosote (dead

oil of coal tar or wood tar), which is rated third class in both Nos. 50 and 51, and the same rating is provided in both southern and official classifications. It is the view of the Commission that this change should be permitted to become effective.

ADVERTISING MATTER.

No. 50, page 22, item 1.

Advertising matter, printed, n. o. s.
(exclusive of signs and show
cards), boxed or in bundles, pre-
paid 1

No. 51, page 70, item 12.

Advertising matter, paper or paper
board, not otherwise indexed by
name, in bundles or crates,
l. c. l. 1½

The rating on advertising matter, paper or paper boards, not otherwise indexed by name, when packed in crates or bundles, is changed from first class to one and one-half times first class. In accordance with the principles announced with regard to package requirements, we are of the opinion that crates and bundles are a less secure and safe package than boxes, and, therefore, that the proposed change should be allowed to become effective.

ANIMAL AND POULTRY FOODS.

No. 50, page 29, items 6-10.

L. C. L. C. L.

Animal and poultry foods and
medicines:

Animal condiments (ground,
for use in making animal
foods), in boxes or barrels,
minimum weight 30,000... 1 4

Animal and poultry foods,
n. o. s., tonics and regu-
lators (prepared), boxed,
in bulk boxed, in pails,
veneered drums, barrels or
bags—

Invoice value not ex-
ceeding 10 cents per
pound and so re-
ceipted for, mini-
mum weight 30,000
pounds..... 4 B

Invoice value exceed-
ing 10 cents per
pound or value not
stated 1

No. 51, page 85, items 15 and 16.

L. C. L. C. L.

Animal and poultry foods and
medicines:

Animal and poultry foods, n.
o. l. b. n., tonics and regu-
lators, dry, prepared—

Invoice value not ex-
ceeding 10 cents per
pound and so re-
ceipted for, in bags,
barrels, boxes, or
pails, minimum
weight 30,000 pounds. 4 B

Invoice value exceed-
ing 10 cents per
pound or value not
stated, in bags, bar-
rels, boxes, or pails... 1

Condiment mixtures for ani-
mal foods, tonics, or regu-
lators, consisting of barks,
herbs, leaves, roots, and
seeds, ground and com-
pounded—

In bulk in barrels or
boxes..... 1

In packages named,
minimum 24,000
pounds 3

Item 16, page 85, of No. 51, reads as follows:

Condiment mixtures for animal foods, tonics, or regulators, consisting of barks, herbs, leaves, roots, and seeds, ground and compounded:

In bulk, in barrels or boxes, l. c. l.....	1
In packages named, c. l., min. wt. 24,000 lbs.....	3

According to the record, the words "and compounded" would force much of this commodity to move at first-class rate, any quantity, provided in items 10 and 11, page 170, of No. 51, under "herbs or leaves not otherwise indexed by name, ground or powdered," and item 11, page 264, under "roots, ground or powdered, not otherwise indexed by name."

Item 7, page 29, of No. 50, which is the item under which shipments have been moving, reads "animal condiments," while the new item in No. 51 reads "condiment mixtures." In order to be a "mixture" it must be "compounded." If it is required that shipments be compounded, it would compel the consignees to furnish their compounding formulas to the shippers, which they naturally object to doing. The carload rating and minimum under No. 50 was fourth class and 30,000 pounds. Under No. 51 the minimum is reduced to 24,000 pounds and the rating advanced to third class. Shippers state that they rarely ship less than 30,000 pounds and could readily load more, therefore the reduction from 30,000 pounds to 24,000 pounds in the carload minimum weight is of no value to them and under this state of facts is an improper classification procedure. If it is feasible to load 30,000 pounds in a car, there is no apparent justification from the standpoint of loading efficiency to lower the minimum and increase the rate.

It is the view of the Commission that item 16, page 85, of classification No. 51, should be amended to read as follows:

Condiments for animal foods, tonics, or regulators, consisting of barks, herbs, leaves, roots, and seeds, ground:

In bulk, in barrels or boxes, l. c. l.....	1
In packages named, c. l., min. wt. 30,000 lbs.....	4

ATHLETIC GOODS—DECOY BIRDS.

No. 50, page 164, item 57.

No. 51, page 89, item 26.

Sporting goods and toys.—Decoy ducks or geese, boxed.....	2	Athletic goods.—Decoy birds in barrels or boxes.....	1
---	---	--	---

Under No. 50, rating on this article in boxes was second class, which is raised to first class in No. 51.

It appears from the record that at the time the second-class rating was established the only type of decoy birds on the market was the solid wooden decoy. Since that time many lighter and more valuable decoys have come into use, such as canvas, paper, tin, aluminum, and hollow wood. On account of the lighter weight of packages and the

greater value of contents, it is the view of the Commission that the proposed change should be allowed to go into effect.

INDIAN CLUBS.

No. 50, page 165, item 10.	No. 51, page 90, item 11.
Sporting goods and toys.—Indian clubs, in barrels or boxes..... 2	Athletic goods.—Indian clubs, wooden, finished, in barrels or boxes..... 1

Under No. 50, wooden Indian clubs were rated as second class. This rating applied to either the finished or unfinished article. Wooden dumb-bells are analogous to Indian clubs. They were rated under No. 50 as first class, which applied on both the unfinished and the finished article. In No. 51 both wooden Indian clubs, finished, and wooden dumb-bells, finished, are given first class.

It is pointed out in the record that the second-class rating was established to apply on plain wooden Indian clubs, there being practically no other variety on the market; but since the time the rating was established many other kinds of clubs, more highly finished and of substantially greater value, have been placed on the market, and on that account to-day the average value of Indian clubs is much higher than formerly.

Unfinished clubs are given second-class rating in No. 51. They are analogous to potato mashers and rolling pins, which are rated at second class when shipped in boxes and barrels.

Other things being equal, a finished article should be rated higher than an unfinished article. No. 51 places finished Indian clubs on the same basis as finished dumb-bells. We see no impropriety in this, and we think that the first-class rate on this article should be permitted to become effective.

BINDER TWINE—BALES OR BUNDLES.

No. 50, page 25, item 32, c. 1. "A," min. 24,000 pounds.	No. 51, page 124, item 27, c. 1. "A," min. 30,000 pounds.
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In No. 50 binder twine is listed under the general heading of agricultural implements and is rated third class, l. c. l., in bales or bundles, and class A, minimum weight 24,000 pounds, in carloads. Its position in the classification automatically allows it to be mixed with agricultural implements, except hand, and to enjoy the benefit of certain privileges accorded to agricultural implements by various exceptions to the classification published by the carriers. It also automatically takes the same commodity rates as agricultural implements under commodity tariffs governed by western classification.

No. 51 takes binder twine out of the agricultural-implement list and puts it under the general heading "Cordage," with no change in the less-than-carload or carload rating, but an advance to 30,000 pounds in the minimum weight.

It is a matter of record and of common knowledge that the sole purpose for which binder twine is manufactured is for use in harvesting machines. It moves in carload lots from the factory to the jobber, but from the jobber to the retailer it moves to a large extent with agricultural implements in mixed carload lots.

Both official and southern classifications place binder twine under the heading "Cordage." Under the official it is rated in carload lots at fourth class, minimum weight 30,000 pounds, and under exceptions mixed with all agricultural implements at the fifth-class rate and minimum of 25,000 pounds. Under southern classification it takes fifth class, minimum weight 30,000 pounds, with the privilege of mixing with harvesting machinery at fifth class, minimum weight 30,000 pounds. Agricultural implements are rated sixth class, minimum weight 20,000 pounds, under the southern classification.

It appears from the record that many of the orders for binder twine vary from 5,000 to 10,000 pounds, moving in cars of agricultural implements. Twine is loaded in and around the implements in the car, and being flexible to a certain extent, forms a cushion or packing, thus rendering the implements themselves less liable to damage. It is not disputed that 30,000 pounds of binder twine can readily be loaded in a 36-foot car, and the testimony shows that it moves under this minimum.

It would be futile to argue whether twine is an agricultural implement, and fallacious to deny to twine a place in mixed shipments of agricultural implements, where the necessities of jobbers and farmers and the conveniences and economy of transportation require it to be.

It is the view of the Commission that binder twine in straight carloads is properly listed in No. 51 under the heading "Cordage," with a minimum weight of 30,000 pounds, but that provision should be made whereby it can be mixed with agricultural implements at the rate and minimum weight applicable thereto and accorded all the privileges accorded to mixed shipments of agricultural implements.

CLAYED COTTON BAGS.

No. 50, page 30, Item 20.				No. 51, page 91, Item 17.			
Bagging and bags, clayed:				Bags, clayed cotton:			
L.	C.	L.	C. L.	L.	C.	L.	C. L.
In bales or bundles.....		3		In bales, boxes, or bundles.....		2	
C. 1. minimum 30,000 pounds.....			4	In packages named, minimum 30,000 pounds.....			3

Clayed cotton bags are advanced from third to second class, l. c. l., and from fourth to third class, c. l., in No. 51.

Southern classification rates clayed cotton bags and all other cotton bags the same, as does the official classification. The official

classification provides for third class, minimum weight 30,000 pounds, c. l., and second class, l. c. l.

It is not apparent why a clayed cotton bag should take a lower rating than any other cotton bag. Grain bags, which are less liable to damage, are rated at third and second class in carloads and less than carloads, respectively. Therefore the Commission is of the opinion that the proposed change should be allowed to become effective.

BALL BEARINGS.

No. 50, page 112, item 15.	No. 51, page 92, item 14.
Machinery and machines: Ball bearings, n. o. s., boxed----- 2	Ball bearings, boxed----- D1
No. 50, page 184, item 9.	
Vehicles, parts: Ball bearings, boxed----- D1	

No. 50, page 112, item 15, under the general heading of "machinery and machines," provides for ball bearings, n. o. s., boxed, at second class, l. c. l. On page 184, item 9, under the general heading "vehicles, parts of," ball bearings, boxed, are rated double first class, l. c. l. It appears from the record that some ball bearings are very cheap, while others run as high in value as 40 cents apiece.

The official classification provides for bearings, ball, n. o. s. (for anti-friction purposes), boxed, at second class, l. c. l., while the southern classification makes no specific provision for ball bearings.

We find no justification for double first-class rating on ball bearings, and no higher than first-class rating should apply on this commodity regardless of whether it is described under "machines and machinery" or "automobile ball bearings."

BOX TOES.

No. 50, page 32, item 47.	No. 51, page 99, item 21.
Boots and shoes and findings: Cut soles, counters, and taps, leather, in boxes, bags, or bales----- 2	Boot and shoe findings: Box toes— In bags----- 1½ In barrels or boxes----- 1
No. 50, page 33, item 3.	
Boots and shoes and findings: Shoe findings, n. o. s., boxed----- 1	

Leather box toes and leather boot and shoe counters are practically identical, the apparent difference being in the shape. Counters are slightly longer and narrower than box toes. The weight per barrel is practically the same.

Under No. 51 box toes are rated at first class when in boxes or barrels and one and one-half times first class when in bags. Counters are rated at second class in either boxes, barrels, or bags.

Both counters and box toes are rated in the official classification at second class in barrels, boxes, or bags.

Both are rated at second class in boxes and barrels, and first class in bags in the southern classification.

We find no justification for a higher rating on box toes than on counters and take the view that box toes, in boxes, barrels, or bags, should take second-class rate, the same as counters.

CORRUGATED FIBER BOARD BOXES.

No. 50, page 34, item 26.		No. 51, page 102, item 14.	
Boxes: Corrugated fiber board		Boxes: Corrugated, k. d., flat or	
boxes, k. d., l. c. l.-----	3	folded flat, in boxes, bundles,	
C. l., min. wt. 30,000 lbs.-----	5	or crates, l. c. l.-----	2
		In packages named, c. l., min. wt.	
		24,000 lbs., sub. to rule 6-B.-----	4

No. 51 advances the less-than-carload rating from third to second class and the carload rating from fifth to fourth class, with a reduction in minimum weight from 30,000 to 24,000 pounds, subject to rule 6-B.

The corrugated board from which these boxes are manufactured is rated at second class, l. c. l., and fourth class, c. l., minimum weight 24,000 pounds, subject to rule 6-B.

In the official classification the boxes and the material from which they are made are rated alike, viz, third class, l. c. l., and fifth class, c. l., minimum weight 24,000 pounds, subject to rule 27, which is similar to rule 6-B of western classification.

In the southern classification corrugated boxes are rated third class, l. c. l., and fifth class, c. l., minimum weight 24,000 pounds, while the material is rated at class A, minimum weight 24,000 pounds.

It will be observed that in neither of these classifications is the rate on the boxes lower than the rate on the corrugated board from which they are manufactured.

The manufactured article should not take a lower rating than the commodity from which it is made, and the ratings published in No. 51 may go into effect.

CRACKER CANS.

No. 50, page 34, item 27.		No. 51, page 102, item 7.	
Boxes and crates, cracker (tin).		Boxes, cracker (cracker cans), tin,	
n. o. s., empty; boxed, crated, or		in packages or loose, minimum	
in jackets, c. l., minimum weight		12,000, subject to rule 6-B.-----	3
12,000, subject to rule 6-B.-----	3		
No. 50, page 39, item 23.		No. 51, page 109, item 10.	
Cans: Tin cans, n. o. s., and tin		Cans: Tin cans, n. o. l. b. n., and tin	
boxes, n. o. s.; minimum weight		boxes, n. o. l. b. n.; minimum	
14,000, subject to rule 6-B.-----	4	weight 14,000, subject to rule 6-B.-----	4

On page 34, items 27 to 29, inclusive, of No. 50, cracker boxes (tin) n. o. s., empty, boxed, crated, or in jackets, minimum c. l. weight

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12,000 pounds (subject to rule 6-B), are rated at first class, l. c. l. and third class, c. l.

No. 51, page 102, items 7 and 8 provide for cracker boxes (cracker cans), tin, in carloads, at third class, minimum weight 12,000 pounds, subject to rule 6-B. Item 9 provides for tin and glass combined at the same rate and item 10 provides for the mixture of the tin and tin and glass combined at the same rating.

It appears from the record that the terms "cracker boxes" and "cracker cans" are used interchangeably in the trade, and that in reality no change has been made in the classification except to provide a carload rating for the combined tin and glass box or can, for which there was no c. l. rating specified in No. 50, and to establish a carload mixture for this commodity with the tin box or can.

CANDY.

No. 50, page 52, items 2 to 8, inc.

Candy, chewing gum, cough candy drops, and confectionery, n. o. s. (including pop-corn confectionery and puffed-rice confectionery), exclusive of sugared pop-corn and pop-corn balls:

In barrels, pails, boxes, or drums, in tin pails crated, in glass boxed, in galvanized-iron pails or galvanized-steel bushel measures with tight wooden covers:

L. C. L. C. L.

Invoice value not exceeding 15 cents per pound, and so receipted for ---- 3

Invoice value exceeding 15 cents per pound or value not stated. 1 3 min.

In baskets with tight wooden covers: 30,000 lbs.

Invoice value not exceeding 15 cents per pound, and so receipted for ---- 1

Invoice value exceeding 15 cents per pound, or value not stated. 1 1/2

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No. 51, page 108, item 4.

Candy and confectionery, not otherwise indexed by name:

In barrels, wooden pails, boxes, or drums; in tin pails in crates; in glass packed in boxes; in iron or steel pails; in iron or steel bushel measures with tight wooden covers; in hardwood jointed stave baskets reinforced with iron or steel bands (staves not less than one-eighth inch thick), with tight wooden covers and double bottoms, covers wired and sealed, l. c. l. ----- 2

In packages named, c. l., min. wt. 30,000 lbs. ----- 3

Under No. 50, candy, chewing gum, cough candy drops, and confectionery, n. o. s., including pop-corn confectionery and puffed-rice confectionery, exclusive of sugared pop corn and pop-corn balls, in packages, except in baskets with tight wooden covers, invoice value not exceeding 15 cents per pound and so receipted for, were rated at third class, l. c. l., and when invoice value exceeded 15 cents per pound or value was not stated, at first class, l. c. l. Packed in baskets, the rating was first class and one and one-half times first class, respectively.

No. 51 eliminates chewing gum, cough candy drops, and pop-corn confectionery from the confectionery list and provides rating of second class, l. c. l., on the balance of candy, regardless of value.

According to the record, the almost universal opinion is that there should be one rating on candy. The rating as prescribed by No. 51 reduces the high-grade candy one class and advances the low-grade candy one class. A considerable portion of the testimony related to the volume of candy sold over and under 15 cents a pound, respectively, but no definite figures were obtained. A large percentage of the low-priced confectionery shipped seems to be pop-corn or puffed-rice confectionery, which in No. 51 is permitted to move in bulk in barrels or boxes, in pressed forms, other than balls, in barrels or boxes, and in cartons in barrels or boxes, l. c. l., at third class, with the valuation clause removed.

Taking into consideration the fact that the high-grade candy has been reduced from first to second class and that the third-class rating is still applicable on pop-corn confectionery, we are of the opinion that the second-class rating should be allowed to become effective.

COUGH CANDY DROPS.

No. 50, page 52, Items 2 to 8 inclusive.

Same as preceding provision for candy.

No. 51, page 127, Item 12.

Cough candy drops or tablets, medicated:

In glass or earthenware, packed	
in barrels or boxes.....	1
In cartons in boxes.....	1

In No. 50 candy cough drops were listed under candy and confectionery. If the invoice value exceeds 15 cents per pound, there is no change in rating under No. 51. Candy cough drops are described as a medicated product analogous to drugs and medicines and are used as such.

The item, as published in No. 51, should be allowed to go into effect.

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CHEWING GUM.

No. 50, page 52, items 4 and 5.

Same as preceding provision for candy.

No. 51, page 167, item 15.

Gum, chewing:

In glass, packed in barrels or boxes, l. c. l.	1
In boxes or cartons, in barrels or boxes, l. c. l.	1
In packages named, c. l., min. wt. 30,000 lbs.	3

In No. 51 chewing gum is taken out of the candy and confectionery list, where it was in No. 50, and given a place by itself with a rating of first class, l. c. l., and third class, c. l. The only apparent change is that the mixture with candy and confectionery has been eliminated. Our general views on mixtures have been previously expressed.

There was no protest made at the hearing against this change, nor was any evidence submitted regarding it. Under the circumstances it may be allowed to stand as published in No. 51.

BUNGS OR PLUGS, WOODEN.

No. 50, page 191, items 49 to 52.

Bungs, c. l., min. wt. 15,000 lbs., subject to rule 6-B	4
N. o. s., l. c. l.	1
In boxes, barrels, or crates, l. c. l.	2

No. 51, page 103, item 30.

Bungs or plugs, wooden, not otherwise indexed by name:	
In bags, barrels, boxes or crates, l. c. l.	3
In packages or loose, straight or mixed, c. l., min. wt. 30,000 lbs.	3

A brief was filed in protest, but no testimony was offered at the hearing regarding the change in rating on bungs or plugs, wooden.

In No. 50, wooden bungs were listed as "woodenware," and were rated in less-than-carload quantities at second class, when in boxes, barrels, or crates; n. o. s., first class; and at fourth class, c. l., minimum weight 15,000 pounds.

Under No. 51, the ratings on these commodities are reduced from first to third class when in bags, and from second to third class when in barrels, boxes, or crates, l. c. l. The carload rating thereon is reduced from fourth class to class A, with an advance in minimum weight to 30,000 pounds.

The statements of loadings by protestants indicate that 30,000 pounds of solid bungs can be loaded in a 36-foot car, but that bored bungs will not load as heavily. However, a 40-foot car can be ordered by shipper and used at the same minimum. Both the official and southern classifications carry a minimum of 30,000 pounds on the bored as well as on the solid bungs.

We think that the change should be allowed to stand.

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TUBING FOR BARN-DOOR HANGER RAILS.

No. 50, page 58, item 47.	No. 51, page 131, item 10.
Door hangers and rail: Tubing for barn-door hanger rail, nested in bundles----- 4	Door hangers and hanger parts: Barn or warehouse door hanger rails or tracks, iron or steel, in boxes, bundles, or crates, l. c. l. 3
No. 50, page 58, item 38.	
Door hangers and rail: Barn-door rails (iron), in bundles, l. c. l.-- 3	

Item 47, page 58, of No. 50, reads, "tubing, for barn-door hanger rail, nested in bundles," fourth class, l. c. l. This item was eliminated in No. 51. It appears from the record that the sample submitted in evidence had been moving under this item and that the change in classification would force it to move under item 10, page 131, of No. 51, under the name "barn or warehouse door hanger rails or tracks, iron or steel," which are rated at third class, l. c. l.

The carriers contend that there is no change in the classification, as the article properly should have moved under item 38 of No. 50, which provides third-class rating, l. c. l., on "barn-door hanger rails (iron) in bundles." They also contend it can not be nested under the requirements of No. 50, which read as follows:

The term "nested," as used in the classification, covers a series of two (2) or more like articles, fitting one within the other.

It is apparent that the exhibits offered in evidence can not be fitted one *within* the other, as only a portion of one can be placed in the other. It would also appear that the exhibit is, in fact, a rail and not tubing.

We do not see sufficient reason for disapproving this change.

CHAINS.

No. 50, page 185, item 19.	No. 51, page 116, item 16.
Vehicles, part of; self propelling vehicle parts.—Fly-wheels, crank shafts, chains, n. o. s., brake drums, springs, axles (without gear), and iron or steel axle housings----- 2	Chains, belting or sprocket (chain or link belting), automobile or bicycle, in barrels or boxes----- 1
	No. 51, page 298, item 42.
	Vehicles, parts of; self-propelling vehicle parts.—Fly-wheels, crank shafts, brake drums, springs, axles (without gear), and iron or steel axle housings----- 2

In No. 51 automobile chains are advanced from second class, l. c. l., to first class. Under No. 50 automobile chains were classified in an

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item which embraced self-propelling fly wheels, crank shafts, brake drums, springs, axles (without gear), and iron or steel axle housings.

Complaint is made that, as the chains are frequently shipped in the same box with the other articles mentioned, the new rating would have the effect of raising the charges on the entire box from second to first class.

Southern classification names fourth-class rating on automobile or bicycle chains, while official classification rates them at second class as automobile gear parts.

We are of the opinion that the advance to first class has not been justified. Bicycle chains should not be rated higher than automobile chains.

CHARCOAL.

No. 50, page 70, item 46.

Fuel: Charcoal, in barrels, hog-
heads, or sacks, l. c. l.----- 3

No. 51, page 117, item 4.

Charcoal, wood:
In glass or earthenware,
packed in barrels or boxes, or
in fiber or metal cans, or cartons
in barrels or boxes----- 2
In bags, l. c. l.----- 3
In bulk in barrels, l. c. l.----- 3

Complaint is directed against a supposed change in the rating on wood charcoal from third to second class, in glass or earthenware, packed in barrels or boxes, or in fiber or metal cans or cartons in barrels or boxes, l. c. l. The second-class rating on this article, as prescribed in No. 51, is in reality a reduction, as supplement 4 to No. 50, effective October 1, 1911, provided a rating of first class. The relation of No. 51 to ratings prior to October 1, 1911, can not be taken up in this proceeding.

CIDER MILLS AND PRESSES COMBINED.

No. 50, page 120, item 6:

L. C. L. C. L.
Machinery and machines:
Presses—Cider, including
combined cider mills and
presses (minimum 24,000)--- 2 A

No. 51, page 199, item 3:

L. C. L. C. L.
Machinery and machines:
Cider mills or presses,
separate or combined—
S. u. loose or on skids... 1
S. u. in boxes or crates... 1
K. d. in boxes, bundles,
or crates----- 2
S. u. or k. d. in pack-
ages, or loose, or on
skids, straight or
mixed, minimum
weight 24,000, sub. to
rule 6-B----- A

No. 50, page 24, items 35 and 37, under the general heading "agricultural implements, except hand," provides for second-class rating, l. c. l., on mills, cider and cob. Because of its position in the classification, this article can be mixed with agricultural implements and shipped at the carload rating and minimum weight applicable thereto.

The only change in l. c. l. rating effected by No. 51 is an advance to first class when the mills are set up loose, on skids or in boxes or crates. No. 50 permits them to be shipped either s. u. or k. d. at second-class rating.

We find that the carriers are justified in placing a higher rating on the set-up than on the knocked-down article.

It should be observed that under a fair interpretation of No. 50 cider mills and presses combined could not move in a mixture with agricultural implements, but in that connection we quote from the testimony on page 3954 of the record:

The present classification does not describe the combined mill and press under the heading of agricultural implements; it describes that class of mill or machine underneath the heading of machinery and machines, but it has been ruled by the transcontinental freight association, and also the inspection bureau, that the class of mills such as we handle, which is a combined mill and press which is used exclusively by the farmer, or nearly so, is a mill which it was intended to pass under the provision or heading of agricultural implements.

It is our view that the article in question is properly rated under the heading of machines and machinery.

COFFEE IN CABINETS.

No. 50, page 84, item 46.	L. C. L.	No. 51, page 119, item 24.	L. C. L.
Groceries.—Coffee, roasted, ground or crushed, in coffee cabinets (wood or iron) boxed or crated.	4	Coffee, roasted, ground, in metal or wooden coffee cabinets in boxes or crates	3

Neither official nor southern classification makes a distinction in the rating on coffee in coffee cabinets and coffee in barrels or boxes, or in fiber or metal cans, or cartons in barrels, boxes, or crates. It appears that a coffee cabinet is not an expensive article, and that shipments of coffee are rendered more safe and secure when packed in cabinets than when in bulk in boxes or barrels.

The advance is not justified. Roasted coffee, ground, in coffee cabinets, l. c. l., should not be rated higher than roasted coffee, ground, in bulk in boxes or barrels, l. c. l. This conclusion is predicated upon the assumption of an inexpensive cabinet. If cabinets of substantial value should be used, a different question would be presented.

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COFFEE, GREEN.

No. 50, page 84, item 35.

	L.	C.	L.	C.	L.
Groceries.—Coffee, green, in					
sacks, minimum weight					
30,000-----	4			5	

No. 51, page 119, item 23.

	L.	C.	L.	C.	L.
Coffee, green:					
In single bags, l. c. l.-----				3	
In double bags (see note),					
l. c. l.-----				4	
In packages named, c. l.					
min. wt. 30,000-----					5

NOTE.—The ratings for coffee in double bags will apply when the inner bag is made of cloth or paper, either separate from the outer bag or pasted to it, if both bags are securely closed at the mouth.

According to the record, there seems to be no serious objection, from a classification standpoint, to a higher rating on green coffee in single bags than in double bags, but the objection arises from the fact that green coffee shipped under class rates in western classification territory comes into competition with green coffee moving under commodity rates from New Orleans.

Southern classification carries rating one class higher on both green and roasted coffee in single bags than is applied on coffee in double bags.

Official classification makes no distinction between the two packages.

At the present time the rating in No. 50 on roasted coffee in single bags is third class, one class higher than in double bags, and No. 51 continues this rating.

There seems to be no doubt that the single bag is a less safe and secure container than the double bag.

Applying the principle previously announced, we are of the opinion that the rating established in No. 51 on green coffee in single bags, l. c. l., should be allowed to become effective.

STOCK FEED COOKERS OR STEAMERS.

No. 50, page 169, item 51.

Stoves.—Tank heaters (including	
feed steamers and cookers and	
furnace kettles), l. c. l.-----	3

No. 51, page 121, item 20.

Cookers, or steamers, stock feed,	
in boxes or crates-----	1

According to the record, the real objection to item 20 of No. 51 arises from the fact that the item as now worded may be susceptible of misconstruction. It seems that there are three general types of so-called feed cookers manufactured.

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First, a cast-iron base on which rests a heavy cast-iron caldron kettle in which the food is cooked from the direct heat of the fire. This type is known in agricultural communities and is described by certain dealers as a feed cooker. It is contended by the carriers that there are many ways in which the article may be used; that it is not a feed cooker but a stove and is properly classified in item 22, page 278, of No. 51, under "Stoves, not otherwise indexed by name, including brewers' stoves," at third class, l. c. l.

Second, a lighter and cheaper article, consisting of a sheet or galvanized iron tank or drum resting on either a sheet or galvanized or cast-iron base, the food being cooked by the direct heat of the fire. It is admitted by at least one of the complainants that, on account of the light construction and less weight per cubic foot of this type of cooker, first-class rating is reasonable.

Third, a boiler or drum into which steam is injected for cooking or steaming food, which is known by the trade as a stock-food steamer.

It is the last-named article that the carriers contend is ratable under item 20, page 121, of No. 51. If the contention of the carriers is sound, there has been no change in rating either on the old-fashioned cast-iron cooker or the steamer.

It is suggested, however, that either item 20, page 121, of No. 51, covering "Cookers or steamers, stock feed," or item 22, page 278, of No. 51, covering "Stoves, not otherwise indexed by name, including brewers' stoves," or both of them, should be so qualified that no question as to their proper application may exist.

CORDAGE.

No. 50, p. 54, items 16 et seq.	L. C. L.	No. 51, p. 125, item 8.
Cordage.—Rope, n. o. s., including		Cordage.—Rope:
hide rope:		
In bundles.....	1	In bundles, l. c. l..... 1
In bales, boxes, or barrels....	2	In coils or on reels, not burlapped, l. c. l..... 2
One-quarter inch or over in diameter, in coils or on reels..	3	In bales, barrels, or boxes, l. c. l..... 2
		In burlapped coils or on burlapped reels, l. c. l..... 3

Applying the principle heretofore expressed with regard to rating commodities when shipped in safe and secure packages, it follows that the unprotected package may properly be rated higher than the protected package; therefore we find that the carriers are justified in rating rope in coils or on reels, unburlapped, one class higher than when burlapped.

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MIXTURE OF LATH YARN AND TWINE.

No. 50, p. 54, items 16 et seq.

No. 51, p. 124, items 25 et seq.

Cordage:

L. C. L. C. L.

Rope, n. o. s., including
hide rope—

In bundles----- 1

In bales, barrels,
or boxes----- 2One-quarter inch
or over in di-

ameter, in coils

or on reels----- 3

Lath yarn and
bale rope, in

coils or on

reels ----- 3

Twine, n. o. s., including
waxed string (min. wt.,
30,000 lbs.)—

In bundles----- 1

In barrels, bales, or

boxes----- 2

4
Min. wt.
30,000
lbs.

4

Mixture of lath yarn and rope elimi-
nated.

Under No. 50, lath yarn, c. l., was rated at fourth class, minimum weight 30,000 pounds, and was allowed to be mixed with rope at the same rating and minimum weight.

No. 51 provides for carload rating of fourth class, minimum weight 30,000 pounds, on straight carloads of lath yarn, but eliminates the mixture with rope.

It appears from the record that from a transportation point of view there is no essential difference between lath yarn and rope, both being made up of strands of sisal, although rope is also made of hemp and other fiber. Both commodities are handled by the same dealers.

The justification of the carriers for the elimination of the mixture on the ground that lath yarn is a twine appears to be purely technical.

It is our view that the elimination of lath yarn from the mixture should not be permitted.

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CORK SHEETS WITHOUT BINDER.

No. 50, page 54, item 38.		No. 51, page 125, items 15, 16, and 18.	
	L. C. L. C. L.		
Cork or cork waste, ground or granulated.—Machine compressed, in bales or in forms or slabs, min. wt. 24,000 lbs.	3 5	Cork, shapes, sheets, or slabs (chips, granulated, ground shavings or waste cork, in machine-pressed forms):	
		Without binder—	
			L.C.L. C.L.
		In bales, barrels, boxes, or crates, l. c. l.-----	2
		In packages or loose, straight, or mixed, min. wt. 20,000 lbs., subject to rule 6-B--	4
		With asphalt or other binder—	
		In bales, barrels, boxes, or crates, l. c. l.-----	3
		In packages or loose, straight, or mixed, c. l., min. wt. 30,000 lbs.	5

Under No. 50, cork or cork waste, ground or granulated, machine compressed, in bales or in forms or slabs, was rated at third class, l. c. l., and fifth class, c. l., minimum weight 24,000 pounds. These ratings applied to the article either with or without asphalt or other binder.

In No. 51 the shapes, sheets, or slabs without binder are advanced to second class, l. c. l., and fourth class, c. l., with a reduction in minimum weight from 24,000 pounds to 20,000 pounds, subject to rule 6-B. There is no change in rating on the shapes, sheets, or slabs with binder, except the minimum weight has been advanced to 30,000 pounds.

In official classification no distinction is made between the compressed sheets with or without binder, the rating being third class, l. c. l. and fifth class c. l., minimum weight 20,000 pounds, subject to rule 27 (which is the equivalent of rule 6-B in the western classification).

In southern classification No. 39 the ratings and minimum weights were made identical with western classification No. 51, but by supplement No. 6 to No. 39, effective November 1, 1912, the former ratings of third class, l. c. l., and fifth class c. l., minimum weight 24,000 pounds, were restored pending the Commission's decision in this case. This supplement makes no distinction between the compressed sheets with and without binder.

According to the record, the machine-compressed shapes without binder weigh approximately 12 pounds per cubic foot, while the

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shapes with asphalt binder weigh 24 pounds per cubic foot. They are also about one-half the value of the lighter article. It is a recognized principle of rate making that a light and bulky article should take a higher rating per hundred pounds than a denser and heavier article. There appears to be no serious objection to the 30,000-pound minimum provided in No. 51 on the shapes with binder.

The ratings and minimum weights on cork shapes, sheets, or slabs, as specified in No. 51, should be allowed to go into effect.

CUTTLE BONE, BROKEN.

No. 50, page 32, item 34.	No. 51, page 130, item 8.
Bone, cuttlefish:	Cuttlebone, in barrels or boxes--- 1
N. o. s., in packages----- 1	
Broken, in packages----- 2	

The principal objection to the advance in rating on broken cuttle bone in packages from second to first class, l. c. l. is offered by dealers who ship birdseed. It has been customary to pack a small piece of broken cuttle bone in the package of birdseed, which would, if first-class rating is allowed to become effective, automatically raise the rating on the entire package to first class.

Under No. 50 both the broken cuttle bone and birdseed were rated at second class, which entitled packages containing both articles to move at second class.

The testimony shows that the price of cuttle bone varies according to its size and that a large broken cuttle bone is more valuable than a small whole one. It is further pointed out that powdered cuttle bone, which is used as a dentifrice, also by jewelers for polishing precious metals, is worth as much as 85 cents per pound.

It seems to us that carriers may apply first-class rating on straight shipments of cuttle bone in packages l. c. l., but that provision should be made in the classification permitting small pieces of cuttle bone to be shipped in packages of birdseed at the rating applicable on the birdseed.

EXCELSIOR.

No. 50, page 65, item 5; and No. 51, page 139, item 9:

There is no change in the rating of excelsior in carloads. Under classification No. 50 the minimum was 20,000 pounds in any size car, but under No. 51 the minimum is 20,000 pounds in a 36-foot car with rule 6-B applied.

Upon examination it appeared that the protest is really against the fixing of a 20,000-pound minimum for a 36-foot car, and the statement was made that if there was to be a rule 6-B the minimum for a 36-foot car should be about 18,000 pounds. The real protest is

therefore not against rule 6-B, but against the minimum for a 36-foot car upon which the rule is based.

Excelsior is made of yellow pine in the south and basswood and tamarac in the north, the former being much heavier per cubic foot. Pine wood weighs 37.5 pounds per cubic foot and basswood 28 pounds.

From loading statements in the office of the Western Classification Committee, covering 296 cars, all of which, except 80, were from mills north of the Ohio and Potomac rivers, it appears that 169 36-foot cars were loaded on an average of 21,837 pounds, and 100 40-foot cars, 22,234 pounds. It thus appears that the 36-foot cars were loaded 1,837 pounds more than the 20,000 pounds provided in No. 51, while the 40-foot cars were loaded 166 pounds more than the application of rule 6-B under No. 51 would have required.

The loading statements of the classification committee would indicate that 20,000 pounds have in the past been loaded in a 36-foot car.

Taking into consideration the facts as they appear in the record, we find that the complainants have not justified their contention that rule 6-B should not be permitted to apply in connection with the minimum weight of 20,000 pounds for a 36-foot car on excelsior, carloads; therefore, the change in No. 51 should be given a fair trial.

FENUGREEK SEED AND FENUGREEK MEAL.

No. 50, page 161, item 47.	No. 51, page 267, item 26.
Seeds, fenugreek seed, in boxes or bags-----	Seeds, fenugreek: In boxes----- 1 In bulk in bags or barrels, l. c. l. 3
No. 50, page 44, item 6.	No. 51, page 142, item 20.
Cereals and cereal products.— Fenugreek meal, in barrels or sacks-----	Fenugreek meal: In boxes----- 1 In bulk, in bags, or in barrels. 3

In No. 50, page 161, item 47, fenugreek seed in barrels or sacks, l. c. l., is rated at fourth class. No. 51, page 267, item 26, advances the rating to third class in bulk in bags or barrels, and to first class in boxes. This change is said to have been made for the purpose of putting fenugreek seed on a parity with cane, hemp, millet, rape, sunflower, or vetch seed, with which it is analogous. No. 51 provides third-class rating on the above-named seeds, in bags, barrels, or boxes. l. c. l., but does not make them first class in boxes, neither does it require shipments in barrels to be in bulk.

This is a cheap seed, valued at from $2\frac{1}{2}$ to $3\frac{1}{2}$ cents per pound, used in the manufacture of stock foods, and is analogous in value, weight, and bulk to flaxseed. The carriers justify the increase on the ground that it was put on the basis of other analogous seeds, such as pumpkin, sugar beet, etc., and not field seeds, like flax and grain, that move in large quantities.

The carriers claim that this seed should take third class in line with other seeds used for food purposes. Fenugreek seed and flaxseed are both used to some extent for medicinal purposes, but their principal use is for feeding stock. Flaxseed is given fourth class in No. 51. We think the carriers should give further consideration to these items before finally disposing of them.

FERRIS WHEELS.

No. 50, page 165, item 22.	No. 51, page 142, item 21.
L. C. L. C. L.	L. C. L. C. L.
Sporting goods—Ferris wheels, k. d., min. wt., 16,000 lbs. sub. to rule 6-B----- 1½ 3	Ferris wheels: K. d. small parts in boxes, other parts in packages or loose, l. c. l.----- 1 K. d. loaded on trucks--- 1 K. d. in packages or loose, or loaded on trucks, min. wt., 24,000 lbs.---- 3
	NOTE: Engines, motors, and the erecting apparatus, other than tools, necessary to the initial equipment of each ferris wheel will be taken k. d. in packages or loose, or on skids or trucks, in mixed carloads with ferris wheels, at the c. l. rating and c. l. minimum weight applicable on ferris wheels.

The official classification No. 38 provides ratings on ferris wheels as follows:

Ferris wheels:

	L. C. L. C. L.
K. d., small parts in boxes, other parts in packages or loose-----	1½
K. d., loaded on trucks-----	1½
K. d., in packages or loose, or loaded on trucks, c. l., min. wt. 24,000 lbs. (see note; note reads the same as note in No. 51, above) -----	3

Supplement 8 to official classification No. 38, effective October 1, 1912, makes no change in less-than-carload ratings but advances the carload rating to second class and reduces the minimum weight to 12,000 pounds, subject to rule 27.

Southern classification No. 39 provides the same descriptions and ratings as now appear in western classification No. 51.

Merry-go-rounds (carousals), power, with or without power equipment, k. d., in packages or loose, minimum weight 16,000 pounds, subject to rule 6-B, are rated third class in both Nos. 50 and 51, and, under No. 50, they mix with ferris wheels at this rating.

It is stated in the record that when the minimum weight of 16,000 pounds was established it represented a loading based upon two wheels to the car, no commercial conditions being recognized. While it is admitted by complainants that it is possible to load two ferris wheels to the car, weighing not less than 24,000 pounds, it is shown

that no carloads of this quantity have ever moved, the shipments invariably consisting of a single ferris wheel.

The Commission is of the view that item 21, page 142, of No. 51, should be amended to provide a minimum weight of 16,000 pounds, and that ferris wheels should also be allowed to mix with merry-go-rounds (carousals) at the same rating and minimum weights, subject to rule 6-B.

SCHOOL DESKS AND SEATS.

No. 50, page 71, item 26.	C. L.	No. 51, page 266, item 2.	C. L.
Furniture.—School desks and seats for pupils only, min. wt., 30,000 lbs.-----	4	School desks or seats, pupils', iron or steel and wood combined, in packages named, straight or mixed, c. l. min. wt., 24,000 lbs., subject to rule 6-B-----	4

Under No. 50 school desks and furniture are found under the heading "Furniture." No. 51 eliminates this item from the furniture list.

The objection to removing school seats and pupils' desks from the furniture list seems to arise from the fact that many commodity tariffs in western classification territory name lower class rates—first, second, third, fourth, etc.—on furniture as described in western classification than the ordinary class rates. Taking school desks and seats out of the furniture list of the classification would, therefore, automatically raise the ratings on these articles in carloads.

The official classification No. 38 lists desks and seats, school, under the heading "Furniture" and provides a carload rating of fourth class, minimum weight 20,000 pounds, subject to rule 27, when folded, and fourth class, minimum weight 24,000 pounds, subject to rule 27, when k. d.

Southern classification No. 39, under the heading "Furniture," provides for school desks or seats, pupils', iron or steel and wood combined, at fourth class, minimum weight 20,000 pounds.

In our judgment the carriers have not advanced proper justification for the elimination of school desks and seats from the furniture list. These articles should be restored to the position accorded them in No. 50 at fourth-class rating and minimum weight of 24,000 pounds, subject to rule 6-B of No. 51.

GRINDSTONES.

No. 50, page 88, item 41.		No. 51, page 165, item 7.	
Grindstones, mounted on shaft or set up in frame, l. c. l.-----	2	Grindstones, mounted on shafts, in barrels, boxes, or crates, l. c. l.---	2

Southern classification No. 39 provides fourth-class ratings, l. c. l., on grindstones, mounted on shafts, in barrels, boxes, or crates, and

fifth-class rating on grindstones without fixtures, frames, or shafts, in packages or loose, l. c. l.

Official classification No. 38 makes no distinction in rating between mounted and unmounted grindstones and applies rule 26 rating on both, irrespective of whether they are packed or loose.

Under No. 51 the shipper is obliged to pack his mounted grindstones in boxes, barrels, or crates, there being no rating provided for them when shipped loose, while under No. 50 they could move at second class, regardless of whether or not they were packed. The question to be considered, therefore, is the reasonableness of the packing requirement. The carriers contend that the requirements for packing grindstones, mounted on shafts, are reasonable, and that, if not crated, the article can be carried safely. The carriers urge further the probability of damage to other freight when not packed in barrels, boxes, or crates. On the other hand, the complainants contend that there are more loose unmounted stones damaged and broken than those mounted on shafts, and that it is possible to so load them in the car as to render them safe for transportation.

It would appear that a grindstone when crated is a safer article to carry than one not so protected, and as the rating on this form of package has not been changed in No. 51, the Commission expresses no opinion as to its reasonableness, but is of the view that grindstones mounted on shafts, loose, should be permitted to move at one class higher than when packed.

SWEAT COLLARS AND PADS.

No. 50, page 88, item 17.

L. C. L. C. L.

Harness and saddlery.—Sweat collars or sweat pads (for horses and mules) (subject to rule 6-B):

Not leather or leather covered, in boxes, crates, or bundles, min. c. l. wt.

16,000 lbs. ----- 2 4

No. 50, page 87, item 50.

Harness and saddlery.—Horse collars, in boxes, bales, or bags ----- 1

No. 51, page 169, item 9.

L. C. L. C. L.

Harness and saddlery.—Horse collars, in bags, bales, barrels, or boxes ----- 1

No. 51, page 169, item 27.

Harness and saddlery.—Sweat pads, cloth, stuffed and quilted:

In bags, bales, or boxes... 2

In packages named, min. wt. 16,000 lbs., subject to rule 6-B ----- 4

No. 51 makes no change in the less-than-carload rating on sweat pads, cloth, stuffed and quilted, in bags, bales, or boxes, this article being rated second class, which was the rating provided by No. 50.

Sweat collars, not leather or leather covered, were rated at second class, l. c. l., in No. 50, but in No. 51 they are advanced to first class 25 I. C. C.

in that they are not specifically named, thus forcing them to take the rating on "horse collars."

Under No. 50, sweat collars and sweat pads, carloads, were rated at fourth class, minimum weight 16,000 pounds, subject to rule 6-B, which rating applied on either straight or mixed shipments of the two articles.

The carriers state as a reason for advancing the less-than-carload rating on the sweat collars that there are manufactured some high-priced canvas collars with enameled face which should fairly take the rating provided for horse collars, viz, first class.

There is nothing in the record to indicate that this article moves in large quantities or that discrimination would result in allowing the rate to remain at second class, l. c. l. In No. 51 the carload rating has been eliminated on sweat collars, as has also the mixture with sweat pads. The carload rating provided in No. 50 on sweat pads, viz, fourth class, minimum weight 16,000 pounds, subject to rule 6-B, has been carried forward in No. 51. It is admitted by the complainants that more than 20,000 pounds of sweat collars can be loaded in a 36-foot car. The carriers have agreed to restore the carload rating of fourth class on sweat collars, with a minimum of 20,000 pounds.

We find that the carriers have not justified the elimination of the mixture of sweat pads and sweat collars and are of the opinion that it should be restored, subject to a minimum of 20,000 pounds. We also find that the carriers have not justified the advance in rating on sweat collars, l. c. l., and take the view that they should not be rated higher than second class.

PUMPING JACKS.

No. 50, page 120, item 36.

Machinery and machines.—Pump-
ing jacks (metal), k. d., crated,
l. c. l.----- 2

No. 50, rule 14.

The terms "crated" or in "crates" mean inclosed on all sides, including bottom, with framework, so as to allow of their being taken in and out of a car within a crate, and so as to fully protect the article from damage by contact with other freight * * * . All parts of articles provided for boxed or crated must be fully protected, as above stated, in order to entitle them to ratings provided, otherwise they are ratable as not boxed or crated.

No. 51, page 208, item 16.

Machinery and machines.—Pump-
ing jacks, k. d., in boxes or
crates, l. c. l.----- 2

No. 51, rule 8, section 7.

Crates must be made of wood, protecting contents on sides, ends, top, and bottom so that no part will protrude. * * *

The only apparent change effected by No. 51 with respect to pumping jacks, k. d., crated, l. c. l., is the elimination of the word "metal." Pumping jacks are rated in both Nos. 50 and 51 at second class. It is complained by the shippers that section 7 of rule 8 of No. 51 requires the guide sticks of the pumping jacks to be crated, while rule 14 of No. 50 does not contain this requirement. Section 7 of rule 8 of No. 51 provides as follows:

Crates must be made of wood, protecting contents on sides, ends, top, and bottom, so that no part will protrude. * * *

Rule 14 of No. 50 defines the term "crated," or "in crates," as meaning "inclosed *on all sides*, including bottom, with framework, so as to allow of their being taken in and out of a car *within the crate* * * *." It is evident that this rule contemplates that shipments described as "crated" or "in crates" should be completely inclosed; therefore in this respect No. 51 does not materially differ from No. 50.

There being no material change, the Commission expresses no opinion.

INSECTICIDES, OTHER THAN AGRICULTURAL.

No. 50, page 187, item 36 et seq.

	L.	C.	L.	C.	L.
Vermin exterminator, dry:					
In glass, boxed					1
In barrels or kegs					2
Insect powders					1
Quassaine, in tin cans, boxed,					
min. c. l. wt. 30,000 lbs.	2			4	
Vermin coating, n. o. s., in					
boxes or cans					2
Vermin exterminator medi-					
cated paper, in tin cans,					
boxed					1

No. 51, page 178, item 7.

	L.	C.	L.	C.	L.
Insecticides, other than agri-					
cultural, n. o. i. b. n., other					
than liquid:					
In glass or earthenware,					
packed in barrels or					
boxes					1
In fiber or metal cans or					
cartons in barrels or					
boxes					1
In bulk in barrels					2

No. 51, page 178, item 1 et seq.

Insecticides and fungicides,					
agricultural, n. o. i. b. n.,					
other than liquid:					
In glass or earthenware,					
in barrels or boxes					1
In fiber or metal cans or					
cartons, in barrels or					
boxes					1
In bulk in barrels or					
boxes					2
In fiber or metal cans or					
cartons in barrels or					
boxes, or in bulk in bar-					
rels or boxes, straight					
or mixed, c. l. min. wt.,					
30,000 lbs.					4

Under No. 50 vermin exterminator, dry, l. c. l., was rated—

In glass, boxed, first class; in barrels or kegs, second class.

no carload rating being provided. In No. 51, item 7, page 173, insecticides other than agricultural, not otherwise indexed by name, other than liquid, l. c. l., are rated—

In glass or earthenware, packed in barrels or boxes, first class. In fiber or metal cans or cartons in barrels or boxes, first class. In bulk in barrels, second class.

No carload rating is specified.

Fiber or metal cartons packed in barrels constitute a safer and more secure shipment than when in bulk in barrels; therefore second-class rating should apply on the commodity when packed in fiber or metal cans or cartons in boxes or barrels. The rating on the article packed in glass in boxes has not been changed, and it is the view of the Commission that the rating on insecticides packed in earthenware in boxes or barrels may be the same as when shipped in glass packed in boxes or barrels.

JUNK.

No. 50, page 100, item 34 et seq.

Junk, consisting of bones; brass, scrap; copper, scrap; drippings, pig iron; glass, broken; hoofs, horn and horn pith; iron, scrap; lead, scrap; paper, scrap; rags; rope (old); rubber (old); tin, scrap; zinc, scrap; min. wt., 30,000 lbs.----- C.

No. 51, page 184, item 12.

Junk, consisting of bones, pig-iron drippings, broken glass, hoofs, horns, and horn pith, scrap iron, scrap lead, old rope, old rubber, and scrap zinc, in packages or loose, straight or mixed, c. l., min. wt., 30,000 lbs.----- C.

The change in No. 51 consists in taking from the mixture "junk" at class C, minimum 30,000, the following articles: Brass and copper scrap, paper scrap, rags, and tin scrap.

Brass and copper scrap have been put in the "brass and copper" heading, taking fourth-class rates, minimum 36,000, the same as pig copper; paper scrap has been put under "paper," and takes class C, with a reduced minimum of 24,000, made subject to rule 6-B; rags take class C, with a reduced minimum of 24,000; and tin scrap has been put under "tin," and takes a fifth-class rating, minimum 30,000.

In the record it is stated that scrap copper and scrap brass are worth nearly as much as pig copper and brass, the rating on which is fourth class, minimum weight 36,000 pounds. In view of this fact, it seems that the new rating in No. 51 is not unreasonable.

On the other hand, it is stated that many small dealers in western classification territory are unable to ship most of the articles in straight carloads, which would force them to pay less-than-carload

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rates on the articles taken out of the mixture. It is asserted that this would prohibit any movement of copper from smaller dealers. Neither official nor southern classification carry the general heading "junk." Official classification, however, permits the mixing of brass and copper scrap with old rope, bones, etc., under rule 10 at the highest carload rating and the highest minimum carload weight provided for any of the articles.

The Commission finds that any of the articles named under "junk" in No. 50 should be allowed to move in mixed carloads at the highest carload rating and highest carload minimum provided for any of the articles in straight carload lots by No. 51.

LADDERS.

The descriptions in both No. 50 and No. 51 being quite lengthy are not reproduced here. In No. 50 the descriptions are on page 101, item 47 et seq., and in No. 51, page 185, item 3 et seq.

No. 50, page 101, items 57 to 63, inclusive, named a fourth-class rating in carloads, with a minimum of 15,000 pounds, subject to rule 6-B, whereas No. 51, page 185, items 5 to 9, inclusive, names a rating of third class, minimum 12,000 pounds, subject to rule 6-B.

The ladder descriptions as published in official classification No. 38, southern classification No. 39, and western classification No. 51 are identical, each classification carrying a carload minimum of 12,000 pounds. Southern classification rates ladders, c. l., at fourth class, while the official classification rates them at third class.

It is contended by the carriers that a minimum carload weight of 12,000 pounds is reasonable, investigation by them having demonstrated that certain types of ladders will not load as heavily as this, while certain other types will load heavier. They also claim that where the minimum is fixed in western classification at 12,000 pounds the rating is, almost without exception, third class. An examination of No. 51 shows that chairs, common, including common rocking chairs (complete chairs, cane, leather, or wood seat, not upholstered, but exclusive of chair frames, upholstered chairs, and grass, rattan, reed, or willow chairs); wooden stools, common; metal chairs and settees are rated at fourth class, minimum weight 12,000 pounds, subject to rule 6-B. It also shows that a minimum weight of 12,000 pounds often carries rating of second class, while third-class rating is often applied on 24,000 to 30,000 pounds minima, and, in the case of tissue copy books, on as high a minimum as 36,000 pounds.

In view of these facts we believe that the change in rating and minimum on ladders, as published in No. 51, should be allowed to become effective.

MACHINERY AND MACHINES.

No. 50, pages 111-128, inc.

Machinery and Machines (Notes): Fire brick and fire clay may be loaded with shipments of machinery, taking class-A rates in carloads, when boilers are included in the car. Boilers; engines, including farm engines; iron rotary blowers; exhaust fans; smoke stacks; steam feed cylinders; sprayers (except hand); pumps, n. o. s.; pulleys and shafting, and wooden or iron tanks may be loaded in mixed carloads with machinery specified above, taking class-A rates in carloads. Dynamos and motors forming an integral part of machinery may take same rating as the machine of which they form a part. Rule 8 will apply on shipments of machinery taking c. l. min. wt. 24,000 lbs. or over.

No. 51, page 197, item 1, note 3.

Machinery and machines: The following fittings, power equipment, or power transmission appliances when necessary for the initial equipment of the machinery or machines, made subject to note 3, will, if shipped in mixed c. l. with such machinery or machines, be taken at the c. l. rating and not less than the c. l. min. wt. applicable on such machinery or machines: Air compressors, belts, boilers and boiler parts, boiler fronts and grate bars, clutches; cog, gear, pulley, or sprocket wheels; electric generators, engines, exhaust fans, or rotary blowers, feed water heaters, foundation anchors or rods, fuel economizers, motors, pipe or pipe fittings, power pumps, power-control switchboards, shafts; shaft collars, couplings, hangers or pillow blocks; smoke flues, smoke stacks, or turbine water wheels, in packages, loose, or on skids, as provided in separate description of articles for carload quantities.

Articles specified in the notes, under machinery and machines, in No. 50, are allowed to mix with machines and machinery taking class-A rates in carloads, without further restrictions, except that fire-brick and fire-clay may be loaded only when boilers are included in the car, and that dynamos and motors are restricted to those forming an integral part of the machinery.

Articles specified in note 3, under machinery and machines, in No. 51, are restricted to such articles as are "necessary for the initial equipment of the machinery or machines made subject to note 3." The effect of this restriction is to limit the mixture to such articles as may be installed or operated together. For example, a shipment of machinery and machines, made subject to note 3 of No. 51, could have mixed with it the following items enumerated in note 3:

One boiler, smokestacks, feed-water heater, foundation anchors or rods, one electric generator, shafting, one engine, shaft coupling, hangers (couplers or pillow blocks), belting, pulley wheels, clutches, exhaust fan, one fuel economizer.

If the articles, enumerated in this list so correspond to each other in size and capacity that they could be used together, and were necessary for the "initial equipment" of a single plant, a carload rate would, under note 3 of No. 51, be applied on the entire shipment.

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A second car, however, might contain the identical items of machinery, subject to note 3, and might have mixed with those items this same assortment of articles, but since in this case the articles do not correspond to each other as to size and capacity and could not be considered necessary for the "initial equipment" of each other, this second car would not, under note 3, be entitled to the carload rate, and it is possible that freight charges would have to be assessed at the less-than-carload rating applicable upon each article in the car. The aggregate charge on such a mixed load at the less-than-carload rates on each item would be practically double the aggregate charge on the basis of the carload rate.

This illustration clearly shows that the application of note 3, in its present form, to the classified rating on items of machinery and machines, as set forth in No. 51, would result in demanding, charging, collecting, and receiving by the carriers in western classification territory a greater compensation for service rendered or to be rendered in the transportation of property for one person or persons, than they would demand, charge, collect, or receive from another person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, in violation of section 2 of the act to regulate commerce.

The testimony shows that the restriction of the mixture to such articles as are necessary for initial equipment would result in making it impossible for the jobber or the retail dealer to take advantage of the mixtures provided in note 3. The jobber and the retail dealer purchase such quantities of machines, machinery, fittings, equipment, and appliances as they may need, from time to time, to replenish their stock of goods. They can not regulate their purchases or their carload mixtures according to the use to which the articles are to be put, and it is impossible for them, in replenishing their stock, to order only such articles as may be installed and operated together.

It is further apparent that the restriction in note 3 is indefinite and ambiguous. For example, one man might plan to run a certain number of machines with one engine, while another man might order the identical list of machines and conclude that one engine is insufficient for his purpose and that two engines are necessary to run the machines he is buying. A plant confined to a small space requires a smaller amount of belting, shafting, pulleys, and so on, for the initial equipment of its machines than is required by a similar plant occupying a much greater space. Who is to be judge of what is necessary for initial equipment?

The carriers claim that some restriction is necessary to prevent abuse of the mixing privilege, asserting that it would be possible to

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defeat the proper carload charge on various articles taking a very high minimum if unrestricted mixture be allowed.

From a transportation standpoint it seems immaterial whether one or two engines are shipped with machines or whether the pulleys and shafting in the car fit together or, in fact, how the mixture is made provided that a small amount of machinery taking a low minimum can not be put into a car practically full of articles taking a high minimum, thus reducing the charge that would ordinarily apply on a straight carload of articles taking such minimum. The restriction of the mixture provided in note 3 to articles "necessary for the initial equipment of the machinery and machines made subject to note 3" is unreasonable and should be eliminated. If it is found necessary to limit the mixture this should be done by placing a limitation upon the quantity of each article that may be shipped in a mixed car and not, as in note 3, by limiting the mixture to only such articles as are capable of being installed and operated together.

The carriers have voluntarily included several appliances and fittings in note 3 of No. 51 in addition to those covered by note in No. 50, and it is the desire of the Commission not to restrict this list.

No. 51 does not include the application of note 3 to the following items of machinery and machines which, under No. 50, were accorded the privilege of being mixed with articles enumerated in its corresponding note, when shipped in carloads:

Item 13, page 197, belt tighteners. Item 19, page 197, boilers, steel boiler drums, air tanks, air receiver tanks, boiler-plate iron. Item 21, page 198, bulldozers. Item 7, page 200, concrete-mixer hoist buckets. Item 8, page 203, hammers, steam or power trip. Item 14, page 205, machines for shearing bar iron. Item 24, page 206, shoes, dies, cams, heads, and tappets, cast iron or steel for stamp mills. Item 12, page 208, pulleys. Item 19, page 208, punching machines used for punching plate and bar iron. Item 20, page 208, purifier boilers, including steam jacket heaters and condensers, feed-water heaters and purifiers, and steel-tank filters. Item 11, page 209, saw frames, circular or drag. Item 16, page 209, screens formed by punching holes in sheet iron or steel. Item 4, page 210, shafting, wrought or cast, with pulleys or wheels attached. Item 17, page 210, smokestacks. Item 1, page 211, stills, copper or iron, including worms. Item 21, page 211, water wheels.

It is desired that the mixture permitted by No. 51 should be as broad as that provided by No. 50. Note 3 of No. 51, with the initial equipment restriction removed, should be made applicable to all items to which the corresponding note of No. 50 was applied.

It will be observed that No. 51 has eliminated the provision contained in No. 50 for the mixture of fire brick and fire clay with machinery when boilers are included in the car. Such provision should be reinstated in No. 51 and be made applicable to all items of machines and machinery to which note 3 is applied.

The following note, applicable to machinery and machines, under No. 50, has been eliminated in No. 51:

Rule 8 will apply on shipments of machinery taking carload minimum weights of 24,000 pounds or over.

The effect of this elimination is to give machinery the advantage of the "follow-lot" rate under rule 24 only where the minimum is 30,000 pounds or more. Under No. 50, by virtue of the above note, the "follow-lot" rate applied on all machinery taking a minimum of 24,000 pounds. Our opinion with regard to "follow lots" has been expressed in the discussion of rule 24. The elimination of the note in No. 51 is approved.

RULE 6-B APPLIED TO MACHINERY AND MACHINES.

Rule 6-B has been applied to a large number of items under machines and machinery.

The carriers have denoted their intention to establish, in connection with the sliding scale of minima provided by rule 6-B, rules protecting the minimum on the size of car ordered. Protesting shippers state that, when this is done, the objectionable features of rule 6-B will have been avoided. Such rules, effective in the exceptions to western classification, published by western trunk lines, read as follows:

When carrier can not furnish car of capacity or length ordered by shipper, and for its own convenience furnishes car of greater capacity or length than the one ordered by shipper, it will be used on the basis of the minimum carload weight fixed in tariff or classification to apply on size of car ordered by shipper, but in no case less than actual weight.

When one car can not be furnished to accommodate the minimum weight of light and bulky articles on which carload ratings are provided in tariffs, two cars may be furnished, charge to be assessed on the basis of the lowest rate and highest minimum weight for the one car ordered. Any excess above the minimum weight to be charged on the basis of the carload rate.

In this connection we call attention to our decision in *Noble v. B. & O. R. R. Co.*, 22 I. C. C., 432, where it was held that in all cases where a carrier by its tariff establishes particular minima as applicable to cars of given dimensions, it must furnish a car of the size provided for in the tariff and ordered by the shipper; or, in case of its inability to do this, must provide other equipment, under such conditions as to fairly protect the minimum of the car ordered, and its tariff should contain a provision to that effect. In this case we further stated that it would not be unreasonable for carriers to provide in their tariffs that the minimum applicable to the special car would not be protected unless the carrier had failed for six days, excluding the day of notice, to furnish the car of the size ordered; but this is not intended to relieve carriers from the duty of furnishing

equipment within a reasonable time. It simply fixes a definite period beyond which the duty to furnish other equipment in lieu of that ordered shall attach.

Rules similar to those in effect in western trunk line exceptions to the classification, and in accord with our decision in the *Noble case*, *supra*, should be made a part of western classification.

MAIL BAGS AND POUCHES.

No. 50, p. 151, Items 13, 17.				No. 51, p. 91, item 22 et seq.			
	L.	C.	L.		L.	C.	L.
Post-office supplies (min. wt. 14,000 lbs., subject to rule 6-B):				Bags.—Mail bags or pouches:			
Government mail bags or sacks, in bales or bundles-----	2		3	Cloth—			
Mail pouches, leather or leather and canvas combined, in bundles-----	1			In bags, bales, boxes, or bundles-----		2	
				In packages named, straight, or mixed, c. l., min. wt., 24,000 lbs-----			3
				Leather or leather and cloth combined—			
				In bags, bales, boxes, or bundles-----		1	
				In packages named, straight or mixed, c. l., min. wt., 24,000 lbs-----			3

No. 51 eliminates the mixture of cloth mail bags or pouches with those made of leather or leather and cloth combined, and advances the minimum in each case from 14,000 to 24,000 pounds.

Official classification makes no distinction in rating between canvas mail sacks and leather or leather and cloth combined pouches, the ratings provided therefor being second class, l. c. l., and third class, c. l., minimum carload weight 24,000 pounds. Southern classification provides second-class rating, any quantity, on all three varieties.

It appears from the record that 24,000 pounds can be easily loaded into a 36-foot car, and that the carriers have no objection to the restoration of the mixed carload rating, minimum weight 24,000 pounds.

We believe that the minimum weight of 24,000 pounds is reasonable for this article, and should be allowed to take effect, but that the mixture should be restored. Although there has been no change effected by No. 51 in the less-than-carload rating on leather or leather and cloth combined pouches, in view of the fact that these articles are rated second class in both the official and southern classifications, we are of the opinion that they should not take a higher rating under No. 51.

MULTIGRAPHS.

No. 50, p. 166, item 61.

No. 51, p. 201, item 4.

Stationery, multigraphs, boxed----	1½	Duplicating machines, document or letter, not otherwise indexed by name, in boxes -----	D 1
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The multigraph appears in No. 50 under the head of "Stationery"; in No. 51 it appears under "Duplicating machines."

Neither the official, southern, nor western classification provides specific rating by name on either multigraphs, printographs, planotypes, or writer presses, all of which are classified under the general heading "Duplicating machines, document or letter, not otherwise indexed by name." Both the official and the southern classifications provide first-class rating, l. c. l., on duplicating machines, which term embraces multigraph duplicating machines. No. 51 names rating of double first class.

In 24 I. C. C., 300, *Pacific Stationery & Printing Co. v. O. W. R. & Nav. Co.*, the Commission held as follows:

Prior to June 1, 1908, the multigraph was also rated with letter duplicators at double first class. On that date the classification rating of the multigraph was, by order of the Commission, reduced to one and one-half times first class. * * * *Forest City Freight Bureau v. A. T. & S. F. Ry. Co.*, 13 I. C. C., 296. While there is some difference between the construction and value of the machines herein involved and the multigraph, we believe they should be given the same rate between the points of origin and destination named.

The opinion related to shipments of printographs, planotypes, writer presses, and addressing machines from Chicago, Ill., and La Crosse, Wis., to Portland, Oreg., which is in the territory covered by the western classification.

The Commission is of the opinion that duplicating machines, as specified in item 4, page 201 of No. 51, should not be rated higher than one and one-half times first class.

OILS—CREOSOTE.

No. 50, p. 182, item 36.

No. 51, p. 224, item 3.

Creosote oil, in tank cars (see rule 32), 8.4 lbs. per gal. (exception to rule 1), c. l.-----	5	Creosote (dead oil of coal tar or wood tar), in tank cars, c. l., wt. per gallon, 8.7 lbs., subject to rule 32-----	5
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Southern classification No. 39 provides for an estimated weight of 8.7 pounds per gallon on creosote oil in tank cars, while official classification No. 38 does not provide for estimated weights. Exceptions to the official classification, however, provide for an estimated weight of 8.5 pounds per wine gallon "only when actual weights can not be ascertained by weighing of shipments or by test-
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weighing and inspection of shippers' records and invoices under agreements made between shippers and the joint rate inspection bureau."

In instances where it is difficult to secure the actual weight of articles shipped, estimated weights per unit may be used in arriving at proper charges. The standard weights per unit established by carriers, as a basis for charges in such instances, must be fair and should be the result of careful investigation. We have not information before us sufficient to pass upon the reasonableness of the standard unit of measurement provided for creosote oil.

LINSEED OIL.

Item 2, page 133 of No. 50, names a fifth-class rating on linseed oil, in packages, in carloads, with a minimum weight of 26,000 pounds, whereas No. 51, page 225, item 4, names a fifth-class rating, minimum 30,000 pounds.

No. 51 is made uniform with official and southern classifications in the carload rating on linseed oil. All three classifications provide a rating of fifth class, minimum weight 30,000 pounds.

We find that the advance in minimum weight on linseed oil, c. l., from 26,000 pounds to 30,000 pounds is not unreasonable and should be allowed to go into effect.

PACKING.

No. 50, p. 65, item 10.	No. 51, p. 280, item 31.
Excelsior.—Wrapping mats, in barrels, boxes, or bundles, min. c. l. wt. 20,000 lbs:	Packing, cushion or mats, excelsior, grass, hay, or straw:
L. c. l.----- 3	In bundles not burlapped,
C. l.----- 5	l. c. l.----- 2
	In bales or burlapped bundles, l. c. l.----- 3
	In bundles, straight or mixed
	c. l., min. wt. 15,000 lbs.,
	subject to rule 6-B----- 4
	In bales, straight or mixed
	c. l., min. wt. 20,000 lbs.,
	subject to rule 6-B----- 5

The l. c. l. rating on excelsior wrapping mats, in bundles not burlapped, is raised from third to second class. The carload rating, in bundles not burlapped, has been increased from fifth to fourth class, while the minimum has been decreased from 20,000 pounds to 15,000 pounds, subject to rule 6-B.

Bundles not burlapped are a more insecure package, involving greater risk in transportation than bales or burlapped bundles. The proposed changes will be permitted to become effective.

PAPER MIXTURE.

No. 50, page 142, item 21, provides for the mixture of two or more of the following at fifth-class rating, minimum weight 36,000 pounds:

Book, cover, news print, document manila, tailors' pattern, poster, writing (flat) and lithographing paper, and cardboard and bristol board, in boxes, bundles, or crates; blotting and stereotype, in boxes, bundles, or crates; and glazed, in boxes, bundles, or crates.

A note in connection with this rating provides as follows:

Wall paper unfinished, in the white, and intended for further manufacture, may be loaded with articles included in bracket at fifth class, min. wt. 36,000 pounds.

The item as published in No. 51, page 235, item 17, reads as follows:

Cover, document manila, and printing, other than news print; writing, other than in sheets less than 31 united inches, length and width added; binders, bristol, card, tag, tar or trunk board, or other paperboard or pulpboard, not otherwise indexed by name; not ruled or printed. * * * In packages named, straight or mixed c. l., min. wt. 30,000 pounds, or mixed with news print paper, in bundles or rolls, c. l., min. wt. 36,000 pounds, fifth class.

Carriers contend that book, poster, and lithographing paper is included in the description "printing, other than news print," carried in No. 51. It appears, however, that tailors' pattern, blotting, stereotype, and glazed paper have been eliminated from the mixture; and it is contended by the complainants that flat writing paper under 31 united inches is also withdrawn from the mixture. Carriers contend that this size writing paper was not included in the mixture in No. 50 and that consequently there has been no change.

Official classification names fifth-class rating on blotting, matrix, or stereotype, minimum weight 30,000 pounds; cover (plain or colored, not printed or embossed), minimum weight 36,000 pounds; enameled, glazed, or surface coated, minimum weight 36,000 pounds; oiled, minimum weight 36,000 pounds; pattern, minimum weight 36,000 pounds; printing, minimum weight 36,000 pounds; wall, unfinished, minimum weight 36,000 pounds; waxed, minimum weight 30,000 pounds; and writing, minimum weight 36,000 pounds. Under rule 10, any of these may be shipped in a mixture at the highest minimum weight applicable to any of the articles.

There appears to be no reason, from a transportation standpoint, why flat sheets of writing paper under 31 united inches should be rated higher than paper of that or a larger size. The Commission is of the opinion that the mixture of the several papers, including writing paper "flat," without regard to size, should be restored.

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No. 50, page 142, item 28.

	L.	C.	L.	C.	L.
Paper tablets and tabs (exclusive of billheads) not printed; cash tabs, flat or in rolls; flexible paper-covered blank books; school composition or students' notebooks (exclusive of school copy books); and score tablets, boxed or crated; min. c. l. wt. 30,000 pounds-----				3	4

No. 51, page 236, item 23 et seq.

	L.	C.	L.	C.	L.
Paper pads or tablets, or blank books with plain or printed flexible paper covers:					
Made of writing paper, ruled or not ruled—					
In boxes, l. c. l.-----				1	
In boxes, straight or mixed, c. l., min. wt. 30,000 lbs-----					3
Made of paper, other than writing, ruled or unruled, not printed—					
In boxes, l. c. l.-----				3	
In boxes, straight or mixed, c. l., min. wt. 30,000 lbs-----					4

The effect of No. 51 is to distinguish between paper pads and tablets made of writing paper and those made of other than writing paper.

Official classification No. 38 provides third-class rating, l. c. l., and fifth-class rating, c. l., minimum weight 36,000 pounds, on paper pads or tablets (blocks or books of writing, book, printing, or manila paper), in bundles or bales, wrapped in paper and afterward covered with burlap, or in crates or boxes. Southern classification No. 39, page 139, items 27, 28, and 29, provides as follows with reference to these commodities:

Pads or tablets, or blank books with plain or printed flexible covers, made of writing paper, ruled or not ruled, in boxes, first class, any quantity; made of paper, other than writing, ruled or unruled, not printed, in boxes, l. c. l., third class; in carloads, fifth class, minimum weight 30,000 pounds.

Supplement 6 to southern classification, effective November 1, 1912, consolidated the three items mentioned above into one item, which reads:

Paper pads or tablets and blank books with flexible paper backs, in bundles, crates, or boxes, l. c. l., 3; same, c. l., 5.

thus making no distinction between tablets or pads made of writing paper and those not made of writing paper.

We find that the carriers have not justified the advance on the writing-paper tablets and are of the opinion that pads or tablets, or blank books with plain printed flexible covers, ruled or not ruled, should not be rated higher than third class, l. c. l., and fourth class, c. l., in western classification territory.

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PAPER; WRITING PAPER; PAPER NOT OTHERWISE INDEXED BY NAME.

No. 50, p. 142, item 21.	No. 51, page 236, item 2.
Paper, writing (flat):	Paper, writing, in sheets less than 31 united inches, length and width added:
L. c. l. ----- 3	In boxes, l. c. l. ----- 1
C. l., min. wt. 36,000 lbs. ----- 5	In boxes, c. l., min. wt. 30,000 lbs. ----- 3
No. 50, page 142, item 19.	No. 51, p. 235, item 18 et seq.
Paper, n. o. s., in boxes (all paper not otherwise provided for in boxes) ----- 1	Paper, not otherwise indexed by name:
	Ruled, in sheets less than 31 united inches, length and width added—
	In boxes, l. c. l. ----- 1
	In boxes, c. l., min. wt. 30,000 lbs. ----- 3
	Ruled, other than in sheets less than 31 united inches, length and width added—
	In boxes, bundles, crates, or rolls, l. c. l. ----- 2
	In packages named, c. l., min. wt. 30,000 lbs. ----- 4
	Not ruled nor printed, in sheets not less than 31 united inches, length and width added—
	In boxes, l. c. l. ----- 1
	In boxes, c. l., min. wt. 30,000 lbs. ----- 3
	Not ruled nor printed, other than in sheets less than 31 united inches, length and width added—
	In boxes, bundles, crates, or rolls, l. c. l. ----- 3
	In packages named, c. l., min. wt. 30,000 lbs. ----- 5

Protest was made against increase in rating on writing paper under 31 united inches, length and width combined, from third class less than carload and fifth class carloads, with a minimum of 36,000 pounds to first class in less than carloads and third class in carloads, with a minimum of 30,000 pounds.

The carriers contend that there is no change in the classification of writing paper, and that the term "flat," as applied to writing paper, contemplates sheets not less than 31 united inches (length and width added), upon which the ratings in No. 51, viz, third class, l. c. l., and fifth class, c. l., are the same as in No. 50. They

also contend that sheets of a smaller size should properly have been shipped as stationery, which took first-class rating, any quantity, under No. 50.

The question of whether or not there has been an advance rests upon the interpretation of the word "flat," and the Commission is not inclined to accept the interpretation which the carriers have placed upon it as used in No. 50. The Commission takes the view that, in the absence of any modifying term or terms, the word "flat" as applied to writing paper in No. 50 would include writing paper not folded, regardless of size.

It appears from the record that even a paper expert is not able to determine in all cases what is and what is not flat writing paper. From a transportation standpoint there is no material difference between a box containing paper over 31 united inches and a box containing paper of smaller dimensions or a box containing a mixture of the two. The testimony shows that the cutting of paper adds only a small fraction to its value.

For reasons stated, and taking into consideration the fact the advance in No. 51 is a departure from uniformity with the official and southern classifications, we are of the opinion that item 2, page 236, should not be allowed to go into effect and that the ratings on writing paper therein named should not be higher than ratings provided for writing paper in item 17 on page 235.

What has been said with reference to writing paper, under and over 31 united inches, pertains equally to paper not otherwise indexed by name. In items 19, 20, and 21, page 235, and 1, page 236, no distinction should be made on the basis of the size to which paper has been cut. The rating on paper, not otherwise indexed by name, should not be higher than that provided in item 17, on page 235.

CHLORATE OF POTASH.

No. 50, page 48, item 46.	No. 51, page 250, item 36.
Potash, chlorate of, in cans, boxed, or in barrels or casks, l. c. l.--- 3	Potassium (potash), chlorate of, other than tablets: In glass or earthenware, packed in barrels or boxes. 1 In fiber or metal cans or car- tons, in barrels or boxes.--- 1 In bulk in barrels, l. c. l.----- 3

The carriers' brief maintains that the medicinal chlorate of potash is at least twice as valuable as the low-grade article, and, assuming that it is the chemically pure grade—that is, in reality a drug—which is packed in glass or earthenware, we are of the opinion that the rating of first class on this form of package should be allowed to become effective.

In accordance with the principle hereinbefore mentioned, that articles shipped in a safer and more secure package should not be rated higher than those shipped in a less safe and secure package, we find that the change in rating from third to first class on chlorate of potash, other than tablets, in fiber or metal cans or cartons in boxes or barrels, is not justified, and that shipments thus packed should not take a higher rating than when in bulk in barrels.

PERMANGANATE OF POTASH.

No. 50, page 46, item 15.

Ash, pearl or soda.—Potash,
n. o. s., in barrels or casks, or in
tin cans boxed, l. c. l.----- 4

No. 50, page 47, item 14.

Chemicals and drugs.—Drugs and
medicines, n. o. s., in boxes, bar-
rels, or kegs ----- 1

No. 51, page 251, item 6.

Potassium (potash), permanga-
nate of:
In glass or earthenware,
packed in barrels or boxes. 1
In metal cans, in barrels or
boxes----- 1
In bulk, in barrels or boxes. 2

The official classification No. 38 provides for permanganate of potash as follows:

In glass or earthenware, packed in bbls. or boxes-----	1
In metal cans in bbls. or boxes-----	2
In bulk in barrels or boxes-----	3

The southern classification No. 39 names the same ratings and provides the same descriptions as western classification No. 51.

No. 50, page 46, items 12 to 20, provide as follows:

	L. C. L.	C. L.
12. Ash, pearl or soda:		
13. In barrels or casks-----	4	
14. In cans, boxed-----	3	
15. Potash, n. o. s., in barrels or casks or in tin cans boxed--	4	
16. Soda ash, in bags-----	3	
17. Carbonate of potash:		
18. In cans, boxed-----	3	
19. In cans, jacketed-----	2	
20. In barrels or casks-----	4	

5
Min. wt.,
40,000
lbs.

It will be observed that in item 15 the word "potash" is at the beginning of the line which is indented under the general heading "ash, pearl, or soda." Under a fair interpretation of No. 50, the term "potash, n. o. s.," as specified on page 46, item 15, would be construed to mean a pearl ash composed of some form of potash other than carbonate of potash (which is the chemical name for ordinary pearl ash). This item, then, does not refer to chemically pure permanganate of potash, which consequently properly belongs under the classification provided for drugs and medicines.

Under this interpretation of item 15, page 46, of No. 50 there is no change in the rating on permanganate of potash in glass or 25 I. C. C.

earthenware, it being assumed that only the chemically pure article, which is, in fact, a drug, is packed in this manner.

Shipments packed in fiber or metal cans in barrels or boxes afford a safer and more secure package than shipments in bulk in barrels and should not be rated higher than when in bulk in barrels.

POTTERY.

No. 51, page 251, items 12 to 22, and page 252, items 1 to 14, contain an exhaustive and highly technical but wholly impracticable pottery list with ratings provided therefor.

The record shows that manufacturers could ship their products under these provisions, but that after a shipment had left the factory it is extremely doubtful if an expert would be able to decide under which item many articles should be classified or rated. It would be manifestly impossible in most cases for the ordinary shipper or an inspector to determine if a given piece of pottery was made of one clay, or of one clay compounded with other clays or bone, or if said piece of pottery had been subjected to one or more firings.

Under official classification No. 38, porcelain ware, n. o. s., in boxes, barrels, or casks, is rated at second class, any quantity; chinaware, n. o. s., in boxes, barrels, or casks, at first class, any quantity; crockery or earthenware, n. o. s., except plumbers' n. o. s., in crates, boxes, tierces, barrels, casks, or hogsheads, l. c. l., under rule 26; in carloads, minimum weight 24,000 pounds (subject to rule 27), at fifth class; stoneware, majolica ware, and queen's ware, n. o. s., are rated the same as crockery, and, therefore, under rule 10 would mix in carload lots with crockery.

The Commission is of the opinion that it should not permit the pottery list and rating, in No. 51, to become effective, and that until such time as the carriers shall have submitted and the Commission approved a simplified and practical classification for articles listed under the pottery items, the descriptions and ratings as carried in No. 50 should remain in force.

PRINTERS' MATERIAL.

The mixture of so-called printers' material is provided for in No. 50, on page 152, items 1 to 11 inclusive, and in No. 51, on page 253, item 18.

Under No. 50 paper-cutting machines and printing rolls were allowed to be shipped in carloads mixed with what is generally termed printers' material. Under No. 51 these two items were eliminated from the description of articles constituting printers' material.

The mixture of so-called printers' material, as provided under No. 51, is not permissible under either the official or southern classifications. It appears from the record that, while paper-cutting

machines are sometimes used by printers, they are also used in other branches of industry and technically could not be classed under the heading "Printers' Material."

We believe the mixture, as provided in No. 51, should be allowed to go into effect.

SODIUM BICARBONATE.

No. 50, page 49, item 20.	No. 51, page 271, item 5.
Chemicals and drugs.—Soda, bicarbonate of, or saleratus, in boxes, kegs, casks, or sacks, l. c. l.-----	Sodium, bicarbonate of (saleratus):
4	In glass or earthenware, packed in barrels or boxes,
	l. c. l.----- 2
	In fiber or metal cans or cartons in barrels or boxes,
	l. c. l.----- 4
	In pails or crates, l. c. l.----- 3
	In bags, l. c. l.----- 2
	In bulk in barrels or boxes,
	l. c. l.----- 4

Southern classification No. 39 names rating of second class, l. c. l., on bicarbonate of soda in glass or earthenware, packed in boxes or barrels, and fifth-class rating, l. c. l., when in other packages, including bags.

It may be assumed that the higher priced article is packed in glass or earthenware and on that ground the advance to second class of bicarbonate of soda, so packed, is justified.

The less desirable package involves a greater risk and consequently justifies a higher rate. The rate of second class in bags, however, is too high for it places the very cheapest quality on a par with the highest priced. This rating should be lowered to third class.

SODIUM PHOSPHATE.

No. 50, p. 49, item 46.	No. 51, p. 272, item 4.
Chemicals and drugs.—Sodium phosphate:	Sodium, phosphate of:
In casks, l. c. l.-----	In glass or earthenware, packed in barrels or boxes,
4	l. c. l.-----
In tin cans, boxed, l. c. l.-----	In fiber or metal cans or cartons in barrels or boxes,
4	l. c. l.----- 1
	In bags, l. c. l.----- 2
	In bulk in barrels or boxes,
	l. c. l.----- 4

Articles packed in fiber or metal cans or cartons produce a safer shipment than when in bulk in barrels or boxes; and there is nothing in the record to show that there is a wide difference in value between phosphate of sodium in bulk in barrels or boxes and the same article when packed in fiber or metal cans in boxes or barrels. We find that 25 l. c. c.

the rating on phosphate of sodium in fiber or metal cans packed in boxes or barrels should not exceed the rating on the same commodity in bulk in barrels. Although bags are a less secure package, in consideration of the cheap quality which moves so packed, the rate should be third class instead of second.

STANCHIONS, IRON OR STEEL; COW STALLS.

No. 50, page 54, item 60.		No. 51, page 274, item 9 et seq.	
Cow stalls, adjustable, k. d.-----	3	Stalls, stanchions, and stanchion frames, live stock :	
No. 50, page 166, item 20.		Stalls—	
Stanchions, cattle, in bundles :		Iron or steel, k. d., small, detached parts in barrels, boxes, or crates; other parts in boxes, bundles, or crates-----	3
N. o. s.-----	2	Wooden, or iron or steel and wood combined, k. d., in boxes, bundles, or crates-----	3
Iron or steel, l. c. l.-----	2	Stanchions, iron or steel, wooden, or iron or steel and wood combined—	
C. l., min. wt. 36,000 lbs.--	4	In boxes, bundles, or crates-----	2

Under No. 51 the carload rating on stanchions has been eliminated. The ratings on stalls, k. d., l. c. l., and stanchions, l. c. l., have not been changed. Neither No. 50 nor No. 51 provide a carload rating for stalls and stanchions mixed.

The minimum weight on cattle stanchions under official classification No. 38 is 30,000 pounds, and the same minimum applies on cattle stalls. Both being rated at fifth class, they would mix at the 30,000-pound minimum. Southern classification No. 39 provides fifth-class rating, minimum weight 20,000 pounds, on horse or cattle stalls, wood and iron, k. d., and fourth-class rating, any quantity, on cattle stanchions. No carload mixture is permitted.

The carriers have announced their intention to restore the carload rating provided in No. 50, with the following mixed-carload provision :

Stalls, stanchion frames and stanchions, live stock, iron or steel, wooden, or iron or steel and wood combined :

Stalls, k. d., small detached parts in barrels or boxes, other parts in boxes, bundles, or crates, l. c. l., third class.

Stanchion frames, k. d., or stanchions, small detached parts in barrels or boxes, other parts in boxes and bundles or crates, l. c. l., second class.

Stalls, k. d., stanchion frames, k. d., or stanchions, small detached parts in barrels or boxes, other parts in packages or loose, straight or mixed c. l., minimum weight 30,000 pounds, class A.

When these items are published the complaint as to stanchions, iron or steel, c. l., will have been satisfied, and it is our view that they should be substituted for items 9 to 13, inclusive, on page 274 of No. 51.

There was no specific provision in No. 50 for stalls or stanchions combined, nor is there in No. 51. The Commission declines, upon this record, to prescribe a rating on this commodity.

MOUSETRAPS.

No. 50, p. 177, items 2, 6, 7, 8, and 9.

Traps, animal or bird, packed flat in bundles.....	1
Rat traps, n. o. s.— In bundles.....	1
Boxed.....	2
Rat traps, wire, in boxes or crates 1½	

No. 51, p. 289, items 37, 38, and 39.

Traps, bird, mouse, or rat— Flat—	
In bundles.....	1
In barrels, boxes, or crates.....	2
Other than flat—	
In bundles.....	1½
In barrels, boxes, or crates.....	1

The ratings established in No. 51 are identical with those published in official and southern classifications and should, in our opinion, be allowed to become effective. A carload rating should be established if carload quantities are offered.

GASOLINE ENGINE TRUCKS.

No. 50, page 177, item 44, under the heading "Trucks," provides third-class rating on gasoline-engine trucks, k. d. No. 51 eliminates this item.

Gasoline-engine trucks are not specifically provided for in the official classification. The southern classification provides for "trucks, portable engine," at fourth class, l. c. l., and sixth class, c. l.

According to the record, there is no material difference between a gasoline engine truck and a farm wagon without the box; in fact, it is almost impossible for an inspector to tell them apart. Farm wagons, k. d., with or without boxes, are rated at first class, l. c. l.

We find that the carriers are justified in providing the same rating on gasoline engine trucks as on common or farm wagons, but suggest that the former be specified by name in No. 51.

FARM TRUCKS.

No. 50, page 182, item 16, provided a rating of third class, l. c. l., for farm trucks, without boxes and without extension boards, k. d. No. 51, page 296, item 5, advances the rate from third to first class.

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Neither official classification No. 38 nor southern classification No. 39 provides specifically for farm trucks. The record does not show a valid reason for a different rating on farm trucks than on farm wagons. We find that the rating on farm trucks as published in No. 51 should be allowed to become effective.

SLEIGHS.

There has been no change in the rating or description of "sleighs" crated, but the definitions of "crated" in the rules of No. 51 are different from those in No. 50.

No. 50, rule 14-A, provides, among other things: The term "crated or in crates" to mean inclosed on all sides, including bottom, with frame work, so as to allow of their being taken in and out of a car within the crate and so as to fully protect the article from damage by contact with other freight. All parts of articles provided for boxed or crated must be fully protected, as above stated, in order to entitle them to ratings provided; otherwise they are ratable as not boxed or crated.

No. 51, rule 8, section 7, provides: Crates must be made of wood protecting contents on sides, ends, top, and bottom, so that no part will protrude.

While carriers contend that both rules require all parts of the sleigh to be completely within the crate, complaining shippers assert that, under No. 50, it has been permissible to ship sleighs as "crated" with the bow of the runner projecting in front and about 6 or 8 inches of the end in the rear.

It seems to have been the practice for years to ship sleighs as "crated" with the runner protruding. It is asserted that the enlargement of the crate, necessitated by the application of the rule, would add greatly to the expense of preparing the article for shipment, without giving the commodity any additional protection; and that the required extension of the crate from 6 to 8 inches in the rear and 10 inches in the front would add practically 25 per cent to the size of the crate, reducing by that amount the actual quantity of the commodity which could be loaded in a car.

In our discussion under rule 8, section 7, we recognized that the carriers have an undoubted right to demand and insist upon secure packages for the protection of commodities contained in them as well as for the protection of other freight. We fail to see, however, in the present instance the necessity of a crate which shall be large enough to include every part of the runner of the sleigh, and must disapprove such requirement.

WHITING.

No. 50, page 141, item 12.

	L.	C.	L.	C.	L.
Paints and varnish.—Paint, dry (chemical, earth, ground iron ore, smalta, whiting and ochre, n. o. s.) min wt. 36,000 pounds:					
In barrels, boxes, or casks-----	4				
In sacks-----	4				
In bulk-----					

O

No. 51, page 284, item 10.

	L.	C.	L.	C.	L.
Paints and varnish, dry (chemical, earth, ground iron ore, smalta, and ochre), n. o. i. b. n.):					
In barrels or boxes, l. c. l.				4	
In bags, l. c. l.-----				4	
In packages named or in bulk, c. l., min. wt. 36,000 lbs-----					O

No. 51, page 116, item 24.

	L.	C.	L.	C.	L.
Chalk, prepared (whiting), ground or lump, n. o. i. b. n.:					
In cans or cartons in barrels or boxes-----				2	
In bulk in boxes-----				4	
In bulk in barrels-----				4	
In bags-----				4	
In packages named, c. l., min. wt. 40,000 lbs-----					O

The changes in No. 51 over No. 50 are the removal of whiting from the dry-paint mixture, making a second-class rating in cans or cartons in barrels or boxes, and increasing the carload minimum from 36,000 to 40,000 pounds.

Whiting in cans or cartons, in barrels or boxes, affords the carriers a safer and more secure package than when the same article is packed in bulk in barrels or boxes. We are of the opinion that the advance from fourth to second class rating on whiting so packed is not justified, and that the rating on this class of package should not exceed the rating on whiting in bulk in barrels or boxes.

The carriers contend that whiting is not a paint, but a talc, and for that reason should not be allowed in a mixture with paint.

It is stated in the record that whiting is used in kalsomine, which is a wall finish. In No. 51 the following note appears at the bottom of the paint list:

NOTE.—Wall finish may be loaded in mixed carloads with dry paint at class C, minimum weight, 36,000 pounds; or with paint in oil at fifth class, minimum weight, 36,000 pounds.

There is no apparent reason why whiting should not be permitted to mix with dry paint when wall finish is allowed to so mix. The
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Commission is of the opinion that whiting either should be restored to the place it occupied in No. 50, or included in note 1, page 234, of No. 51.

ZINC SALTS (Dry).

No. 50, page 50, item 13 et seq.	No. 51, page 309, item 22 et seq.
Chemicals and drugs:	Zinc salts—Chloride of zinc, dry—
Zinc—	In glass or earthenware,
Chloride of, in barrels,	packed in barrels or boxes,
boxes, casks, or drums,	l. c. l.----- 1
l. c. l.----- 4	In metal cans in barrels or
Sulphate of----- 3	boxes, l. c. l.----- 1
	In bulk in barrels, l. c. l.----- 4
	Sulphate of zinc:
	In glass or earthenware,
	packed in barrels or boxes,
	l. c. l.----- 1
	In fiber or metal cans or car-
	tons in barrels or boxes,
	l. c. l.----- 1
	In bulk in barrels or boxes,
	l. c. l.----- 3

No. 51 provides an advance from fourth to first class on chloride of zinc in glass or earthenware or in metal cans, in barrels or boxes, and from third to first class on sulphate of zinc in glass or earthenware or fiber or metal cans or cartons, in barrels or boxes.

Assuming that chloride of zinc when shipped in glass or earthenware, in barrels or boxes, is a drug or medicine, the Commission takes the view that first-class rating should be allowed to go into effect.

Chloride of zinc, dry, packed in metal cans in boxes or barrels produces a safer and more secure shipment than when packed in bulk in barrels; therefore, the Commission is of the view that the advance to first class, on this article so packed, is not justified, and should not be allowed to become effective.

For similar reasons we are of the opinion that the first-class rating on sulphate of zinc in glass or earthenware, packed in barrels or boxes, should be allowed to become effective, and that sulphate of zinc in fiber or metal cans or cartons in barrels or boxes should not exceed the rate on sulphate of zinc in bulk in barrels or boxes.

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OILS, ESSENTIAL, NATURAL OR ARTIFICIAL—CAMPHOR, CITRONELLA, MIRBANE, SASSAFRAS.

No. 50, p. 66, items 5 to 10, inc.		No. 51, p. 224, items 5, 6, 7, 8, and 9.	
Extracts, including essential oils, n. o. s.—		Oils, essential, natural or arti- ficial.—Camphor, citronella, mir- bane, sassafras:	
In boxes, bbls., or iron drums	1	In glass, packed in barrels or boxes	1
In glass, packed in baskets	D 1	In jacketed metal cans in crates	1½
In tin cans, jacketed	D 1	In metal cans in barrels or boxes	1
In bulk, invoice value not ex- ceeding 50 cts. per lb. and so receipted for, in barrels, kegs, or in iron drums	2	In bulk in barrels	1

The descriptions in southern classification No. 39 and western classification No. 51 are identical but the ratings vary. The following is a comparison:

Camphor, citronella, mirbane, sassafras:	Southern.	Western.
In glass packed in barrels or boxes	D 1	1
In jacketed metal cans in crates	D 1	1½
In metal cans in barrels or boxes	1	1
In bulk in barrels	1	1

The official classification provides first-class rating, l. c. l., on essential oils "in cans or glass, boxed or in barrels or iron drums," no rating being provided for the commodity when "in jacketed metal cans in crates." It is manifest that a jacketed metal can is not as safe and secure a package as a barrel or a barrel containing metal cans. The Commission takes the view that the ratings on essential oils named above, as published in No. 51, page 224, items 5 to 9, inclusive, should be allowed to go into effect.

OILS, ESSENTIAL, NATURAL OR ARTIFICIAL, N. O. I. B. N.

No. 50, p. 66, items 5 to 10, inc.		No. 51, p. 224, item 10.	
Extracts, including essential oils, n. o. s.:		Oils, essential, natural or arti- ficial, n. o. i. b. n.:	
In boxes, barrels, or iron drums	1	In glass, packed in barrels or boxes	3t 1
In glass, packed in baskets	D 1	In copper drums	3t 1
In tin cans, jacketed	D 1	In jacketed metal cans in crates	D 1
In bulk, invoice value not ex- ceeding 50 cts. per lb. and so receipted for, in barrels, kegs, or iron drums	2	In metal cans in barrels or boxes	D 1
		In bulk in barrels	D 1

The following is a comparison of the ratings on essential oils, n. o. i. b. n., as carried in southern classification No. 39 and western classification No. 51:

	Southern.	Western.
In glass packed in barrels or boxes	3t 1	3t 1
In copper drums	D 1	3t 1
In jacketed metal cans in crates	3t 1	D 1
In metal cans in barrels or boxes	D 1	D 1
In bulk in barrels	D 1	D 1

Official classification No. 38 provides first-class rating on essential oils, n. o. i. b. n., "in cans or glass, boxed, or in barrels or iron drums."

Essential oils are said to be to all intents and purposes a drug or medicine. The record shows that some of the essential oils are extremely valuable, while others are of a comparatively low value. This is true of all drugs and medicines. There was no testimony as to the relative volume of high-priced oils moving in bulk in barrels, but it is a fair assumption that there must of necessity be a very small amount, if any. The Commission is of the opinion that essential oils, n. o. i. b. n., in glass, packed in barrels or boxes, in copper or iron drums, in metal cans in boxes or barrels, or in bulk in barrels, should not be rated higher than first class and that the double first-class rating on this commodity in jacketed metal cans in crates should be allowed to go into effect.

AGRICULTURAL IMPLEMENTS, CARLOAD, MINIMUM WEIGHT.

Both No. 50 and No. 51 fix the carload minimum on agricultural implements at 24,000 pounds. Under No. 51 agricultural implements are made subject to rule 6-B, which has the effect of making the minimum 24,000 pounds for a 36-foot car with a deduction of 3 per cent per foot on cars less than 35 feet 7 inches in length, subject to a minimum of 91 per cent and an increase of 3 per cent per foot on cars over 36 feet 6 inches in length.

Official classification No. 38 names a minimum of 24,000 pounds, subject to rule 27 (which is a sliding scale similar to rule 6-B of western classification). Southern classification No. 39 names a minimum of 20,000 pounds, which is automatically subject to rule 24 thereof. Rule 24, of southern classification No. 39, provides for a sliding increase in minimum for cars over 36 feet 6 inches in length, but does not provide for deductions for cars less than 36 feet 6 inches in length.

Under the heading of rules we discussed the application of rule 6-B to the minimum of 24,000 pounds on agricultural implements. In accordance with our conclusions as there expressed the initial minimum for the application of this rule should, wherever a minimum of 24,000 pounds is specified, be lowered to 20,000 pounds for a 36-foot car.

AGRICULTURAL IMPLEMENTS AND AGRICULTURAL-IMPLEMENT PARTS (MIXTURES).

No. 51, page 77, items 9 to 11, inclusive, and page 78, item 1, provide for the mixture of agricultural implements now "taking class A, minimum weight 24,000 lbs." Most of the articles named are subject to rule 6-B, but a few, probably less than a dozen items, are

rated at class A, minimum weight 24,000 pounds, regardless of length of car used. In the preceding paragraph we have held that on all items under agricultural implements, to which rule 6-B applies, the initial minimum should be reduced to 20,000 pounds. All articles in the agricultural implement list rated at class A, minimum weight 24,000 pounds, and rated class A, minimum weight 20,000 pounds, subject to rule 6-B, should be allowed the mixed-carload privileges provided in items 9, 10, and 11, page 77, and item 1, page 78, of No. 51, at a minimum weight of 20,000 pounds, subject to rule 6-B.

AGRICULTURAL IMPLEMENTS—CULTIVATORS, HAND.

No. 50, page 28.	No. 51, page 71, item 1.
Agricultural implements, hand:	Agricultural implements, hand.—
Item 6, cultivators, wood and iron, k. d., in bundles.....	Cultivators, wheeled, with or without drill or seeder attachment:
1	Handles, in bundles; other parts in boxes or crates,
Item 28, hoes, wheel and seed drills combined, boxed or crated.....	l. c. l. 1
1	In boxes or crates, l. c. l. 2
Item 27, hoes, wheel and cultivators combined, boxed or crated.....	
1	
Item 49, seed drills and cultivators combined.....	
2	

The four items in No. 50 above set out have been drawn together in No. 51 under item 1, page 71. Under No. 51, all parts of cultivators except the handles must be boxed or crated in order to secure the rating of first class, and all parts, including handles, must be boxed or crated to secure the rating of second class. Under No. 50, cultivators could move in bundles, first class, and boxed or crated, with handles in bundles, second class. An article boxed or crated or partially boxed or crated affords a safer and more secure package than when in bundles, and for that reason we believe item 1, page 71, of No. 51 should be allowed to go into effect.

CULTIVATORS, POWER.

No. 50, page 23, item 20.	L. C. L.	No. 51, page 74, item 3.
Agricultural implements, except hand.—Cultivators (iron or wood)—		Agricultural implements, other than hand.—Cultivators—
S. u.	D 1	S. u., l. c. l. D 1
K. d. flat, in bundles.....	3	K. d., blades, disks, handles, levers, plant fenders, poles, seats, shovels, wheels, singletrees, doubletrees, and eveners detached, in boxes, bundles or crates, l. c. l. 3
With arch bars attached, otherwise k. d.	2	
With wheels, poles, handles, shovels, and whiffletrees detached.....	1	
25 I. C. C.		

Item 3, page 74, No. 51, specifies to what extent an article must be knocked down in order to enjoy the less-than-carload rating of third class.

The term "k. d. flat, in bundles," is extremely ambiguous, especially when applied to agricultural implements. As the new specifications are clear and explicit, the change effected by No. 51 is approved.

DISK AND DRAG BARS COMBINED.

No. 50, page 27, items 2 and 13.		No. 51, page 79, item 7.	
	L. C. L.		
Agricultural implement parts:		Parts for agricultural implements,	
All parts, n. o. s.	1	other than hand.—Disks and	
Disk and drag bar attach-		drag bars combined:	
ments, for seed drills, in		Loose, l. c. l.	1½
boxes or casks	3	In bundles, l. c. l.	1
		In crates, l. c. l.	2
		In barrels or boxes, l. c. l.	3

Under No. 50 the only specific packing provision for disk and drag-bar attachments was in boxes or casks, third class. Under the rules of the classification they would be second in crates and first in bundles. When shipped loose the only provision therefor was the n. o. s. rating of first class. Under No. 51 the rating is second class in crates, first class in bundles, and one and one-half times first class loose, the only advance being when shipped loose.

Articles shipped loose are necessarily more susceptible to damage than when shipped in packages; they are also more likely to damage other freight which may be loaded in the car. Nevertheless we think that the advance to one and one-half times first class is out of proportion to the increased risk. We can not approve this item on the present showing.

DISK HARROWS, CRATING DISK SECTIONS.

No. 50, page 28, item 51.		No. 51, page 75, item 4.	
	L. C. L.		
Agricultural implements, except		Agricultural implements, other	
hand.—Harrows:		than hand.—Harrows, disk, with	
Disk, and combined disk har-		or without sower attachment:	
rows and seeders, s. u.	1½	S. u., l. c. l.	1½
With weight boxes at-		K. d., disk sections loose, other	
tached, in sections,		parts in boxes, bundles, or	
levers, irons, and seats		crates, l. c. l.	2
removed and tied in		K. d., disk sections in crates,	
bundles	3	other parts in boxes, bun-	
		dles, or crates, l. c. l.	3

No. 51 provides a second-class rating on disk harrows with disks shipped loose. It is apparent that the disk harrow without protection to the cutting edge is more likely to injure freight handlers and other freight than when the disks are protected, but, as we stated in the preceding paragraph, there is nothing in this record to show that

the degree of the increased risk and danger is proportionate to the amount of the proposed advance. This item can not be approved.

EGG CASES OR CARRIERS.

No. 51, page 183, item 29: Under the provisions of No. 51 the mixture of egg cases and egg-carrier fillers was eliminated. This mixture should be restored.

HAY PRESSES.

No. 50, page 25, item 8.	L. C. L.	No. 51, page 75, item 10.
Agricultural implements, except hand.—Hay presses:		Agricultural implements, other than hand.—Hay presses:
Wheels on or off, other detachable parts removed, small parts in packages.....	3	S. u., l. c. l..... 1 K. d., wheels on or off, l. c. l.... 3

No. 51, by including the letters "k. d.," requires a more complete taking apart of the hay press than under No. 50, where those letters are not included.

Official classification No. 38, page 38, item 6, provides for hay presses, l. c. l., as follows:

S. u.....	1
K. d., wheels on or off.....	B 26

Southern classification No. 39 provides:

S. u., l. c. l.....	1
K. d., wheels on or off.....	4

It will be observed that the packing requirements in No. 51 are identical with those in official and southern classification. This will not be disapproved.

MOWER KNIFE GUARDS WITH GUARD PLATES ATTACHED.

No. 50, page 27, item 28.	L. C. L.	No. 51, page 80, items 5 and 6.
Agricultural implement parts, knives and guard plates, mower or reaper—		Parts for agricultural implements, other than hand:
In bundles or incased in boards	1	Knife guards, with guard plates attached, for harvesters, mowers, or reapers, in barrels or boxes, l. c. l..... 3
In boxes	3	Knife guards, without guard plates, for harvesters, mowers, or reapers, in bags, barrels, or boxes, l. c. l..... 4
No. 50, page 27, item 32.		
Agricultural implement parts, mower knife guards, in boxes, barrels, or kegs.....	4	
No. 50, page 27, item 2.		
Agricultural implement parts, n. o. s.....	1	

The rating on mower knife guards with guard plates attached has been increased from fourth to third class.

Official classification No. 38 provides as follows:

Knife guards, with guard plates attached, for harvesters, mowers, or reapers: In barrels or boxes.....	3
Knife guards, without guard plates, for harvesters, mowers, or reapers: In bags, barrels, or boxes.....	3

Southern classification No. 39 carries the same descriptions, but rates both items at second class.

From a transportation standpoint there is no material difference between a guard with the plate or without the plate, the weight and value being approximately the same and the space occupied being identical. There is no apparent reason which justifies the carriers in charging a higher rating on knife guards with guard plates attached than on knife guards without guard plates. We believe the rating in No. 51 should not exceed fourth class.

POTATO CUTTERS, HAND.

No. 50, page 24, item 57.		No. 51, page 71, item 2.	
	L. C. L.		
Agricultural implements, except hand.—Potato cutters, k. d., in bundles.....	3	Agricultural implements, other Cutters, seed potato, in boxes, bundles, or crates.....	2
No. 50, page 22, item 20.			
Agricultural implements, except hand.—Bulky and light implements, n. o. s.—			
S. u.	D1		
K. d., flat, in bundles.....	1		

Technically, k. d. hand potato cutters were not provided for under No. 50, the third-class rating being carried under agricultural implements, *other than hand*, i. e., power implements. Under No. 51 the hand cutter, set up or knocked down, is placed in second class.

Official classification No. 38 names first-class rating on "cutters, seed potato, in boxes, bundles, or crates." Southern classification No. 39 provides for "cutters, seed potato, in boxes, bundles, or crates," at second class.

The record shows that the weight per cubic foot is the same whether the article is set up or knocked down. We are of the opinion that the carriers are justified in making the change as published in No. 51.

POTATO CUTTERS, POWER.

No. 50, page 24, item 57.		No. 51, page 77, item 8.	
Agricultural implements, except hand.—Potato cutters, k. d., in bundles, l. c. l.	3	Agricultural implements, other than hand, n. o. l. b. n. :	
		S. u., l. c. l.	D1
		K. d., in boxes, bundles, or crates, l. c. l.	1

25 I. C. C.

There is no information before us upon which action can be based. There appears to be some doubt about the existence of the article.

POTATO PLANTERS.

No. 50, page 25, item 4.	No. 51, page 76, item 11.
Agricultural implements, except hand.—Potato planters (wheeled):	Agricultural implements other than hand.—Potato planters:
S. u., l. c. l.----- 1½	Coverers, levers, and openers wired to frame or detached and in hopper, markers and poles detached, loose, l. c. l. 1
Taken apart, wheels on or off, small parts tied in bundles, l. c. l.----- 3	Markers and poles detached and in packages or loose, other parts in boxes or crates, l. c. l.----- 1

Neither classification seems to provide a knocked-down rating in terms, but it will be observed that the description in No. 51 is substantially the same as under No. 50, with the exception that the words "wheels on or off" in No. 50 are omitted in No. 51. The practical result to the shipper of the potato planter is that the rating has been raised from third to first class.

The descriptions of potato planters, other than hand, in No. 51 are identical with the descriptions in official classification No. 38 and southern classification No. 39, although the ratings vary. None of these classifications provide for potato planters, k. d.

On page 129 of the carriers' brief it is stated that the carriers will provide a suitable item for potato planters, k. d., with a third-class rating. When this is accomplished, No. 51 will have provided for the article in all the forms in which it is shipped. With the understanding that the carriers will incorporate third-class rating on potato planters, k. d., the items on this article as carried in No. 51 will be allowed to become effective.

HAY CARRIERS.

No. 50, page 24, item 4.	No. 51, page 75, item 6.
Agricultural implements, except hand.—Hay carriers, l. c. l.----- 2	Agricultural implements other than hand.—Hay carriers, iron or steel, in bundles, boxes, barrels, or crates, l. c. l.----- 2

The carriers have agreed to apply the same rating on hay carriers made of iron or steel and wood combined. This correction should be made in No. 51.

FEED OR LITTER CARRIERS.

No. 50, page 22, item 20.

Agricultural implements except hand,
bulky and light implements, n. o. s.:

		L. C. L.	C. L.
		A	
Set up-----	D1	1	Min. wt.,
K. d. flat in bundles--			24,000
			lbs.

No. 50, page 111, item 44 et seq.

Machinery and machines.—Machinery,
n. o. s.:

		L. C. L.	C. L.
		A	
Completely k. d. and boxed-----	2	1½	Min. wt.,
In frame or set up--			24,000
K. d. in pieces-----	1		lbs.

No. 51, page 110, item 23.

Carriers, feed or litter, in boxes,
bundles, or crates----- 1

Feed or litter carriers were not specifically provided for in No. 50, and it seems that at times charges were collected on the assumption that they were agricultural implements, while at other times the machinery, n. o. s., rating was applied.

Under No. 51 feed or litter carriers have been segregated, given a separate item, and have not been included under the heading of agricultural implements. Had feed or litter carriers been placed under the heading of agricultural implements they would have been accorded lower ratings and minima in certain commodity tariffs, and would have been accorded certain mixing and stoppage in transit privileges.

Feed or litter carriers are not implements and tools used exclusively in tilling the soil or in harvesting the crops. They are found in the city as well as on the farm. There are, however, a number of articles in the agricultural implement list of No. 51 the use of which is not restricted to farming. Among such articles may be mentioned corn shellers, pea hullers, barrel carts, traction engines, hay carriers, cane mills, and combined corn and cob mills. Feed or litter carriers are of the same general construction as hay carriers.

It is shown in the record that feed or litter carriers are handled largely by agricultural-implement dealers, and it is a common practice to ship them in cars with agricultural implements.

Feed or litter carriers should either be included in the agricultural implement list or should be provided with a carload rating and minimum of 20,000 pounds identical with agricultural implements, with a proper notation to the effect that they may be mixed with agricultural implements, and that, when shipped in straight carloads, at the agricultural-implement rating, they shall enjoy all privileges accorded agricultural implements.

25 I. C. C.

CANNED GOODS.

No. 50, page 38, items 68 to 72, inc.

Canned goods.—Fruit and vegetables, n. o. s., including pimientos (canned peppers), baked beans and pork, canned hominy, and canned corn, in tin cans, boxed, in cans, crated, in glass or stone jars, boxed, min. wt. 36,000 lbs., c. 1.----- 5

NOTE.—Canned sauerkraut may be included with canned fruits and vegetables, n. o. s., including pimientos (canned peppers), baked beans and pork, canned hominy, and canned corn, in mixed c. 1., at fifth class, min. wt. 36,000 lbs.

No. 51, page 108, item 14.

Canned goods.—Vegetables not otherwise indexed by name, including pimientos (canned peppers), baked beans and pork, canned hominy, and canned corn, in packages named straight or mixed, c. 1., min. wt. 36,000 lbs. 5

NOTE.—Canned sauerkraut may be included with canned vegetables not otherwise indexed by name, including pimientos (canned peppers), baked beans and pork, canned hominy, and canned corn, in mixed c. 1., at fifth class, min. wt. 36,000 lbs.

No. 51, page 149, item 2.

Fruit, canned or preserved (in juice or sirup, or in liquid other than brine or alcoholic liquor), fruit butter, crushed fruit, fruit jam, fruit jelly, or fruit pulp, in packages named straight or mixed, c. 1., min. wt. 36,000 lbs. 5

Under No. 51, canned fruit is eliminated from the mixture with canned vegetables and a new mixture, not found in No. 50, is provided in item 2, page 149 of No. 51. The elimination of the mixture of canned fruit and canned vegetables has been the subject of vigorous protest, and a general mixture of food products is asked for.

No. 51, page 108, item 19, provides for the following articles at fifth class, minimum weight 36,000 pounds, in straight or mixed carloads:

Canned meats and soups, including canned sausage, meats potted and pickled, chill con carne, chicken tamales, spaghetti-meat-chill, corned beef, dried or smoked meats, corned beef hash, and canned meats with vegetable ingredients. There is no change in this item from that carried in No. 50, page 39, item 12.

In the argument of this case before the Commission the carriers admitted that the mixture of canned fruit and canned vegetables should be restored and also that preserved fruit should be included in the mixture.

All the articles named under item 2, page 149, item 19, page 108, and item 14, page 108, of No. 51 (except fruit butter, crushed fruit, fruit jam, fruit jelly, or fruit pulp) are strictly canned goods or of similar character. The carriers have voluntarily included fruit butter, crushed fruit, fruit jam, fruit jelly, and fruit pulp in mixture with canned or preserved fruit. We are of the opinion that all the articles named in these three items should be allowed to be mixed in carload lots at fifth-class rating, minimum weight 36,000 pounds.

25 I. C. C.

We make no specific finding with reference to the mixture of all articles whatsoever which may perchance be designated as food products, but, in making proper disposition of this subject, we refer the carriers to our discussion of the general subject of mixtures.

NEWSPAPERS, PARTLY PRINTED (PATENT INSIDES).

No. 50, page 143, item 47.

Patent insides, and newspaper supplements, folded (not sewed), in bundles ----- 2

No. 51, page 221, item 5.

Newspapers, wholly or partly printed, in boxes, bundles, or crates ----- 1

The rate is raised from second class, under No. 50, to first class, under No. 51.

Patent insides can be described as "Newsprint—paper with reading matter, special features, etc., printed on one side of sheet. Other side is blank." It appears from the record that this article is a lower-priced commodity to the newspaper publisher than the blank or unprinted newsprint paper, which is rated at third class. Official classification No. 38 rates "newspapers, wholly or partly printed," at first class, l. c. l., while southern classification No. 39 provides for "newspapers, wholly or partly printed," at second class, l. c. l. We find that the carriers have not justified the advance, and are of the opinion that newspapers partly printed (patent insides) should not be rated higher than second class.

CATTLE, POULTRY, OR SHEEP DIP.

No. 50, page 162, items 9, 10, and 11.

L. C. L. C. L.

Sheep or Cattle Dip:

Invoice value not exceeding 6 cents per pound and so receipted for, min. c. l. wt. 38,000 lbs. 4 C
Value exceeding 6 cents per pound or value not stated, min. c. l. wt. 38,000 lbs. ----- 3 A

No. 51, page 113, items 28, 29, 30, and 31.

L. C. L. C. L.

Cattle, poultry, or sheep dip not otherwise indexed by name:

Liquid—

In metal cans completely jacketed --- 3
In metal cans in boxes or crates --- 3
In bulk in barrels --- 4
In packages named, straight or mixed carloads, min. wt. 30,000 lbs. ----- C

Other than liquid—

In barrels or boxes --- 3
In packages named, straight or mixed c. l., min. wt. 30,000 lbs ----- A

Liquid and other than liquid in packages named for l. c. l. shipments, mixed c. l., min. wt. 30,000 lbs ----- A

25 L. C. C.

No. 51 eliminates the differentiation between cattle or sheep dip valued over and under 6 cents per pound and makes a classification of liquid dip and other than liquid dip. By removing the valuation clause and thus establishing one rate for cattle or sheep dip, irrespective of its value, No. 51 affects the following changes in rating:

Under No. 50 cattle or sheep dip, value not exceeding 6 cents per pound, in jacketed cans or in metal cans in boxes or crates, was rated at fourth class, l. c. l. No. 51 advances the rating to third class. Cattle or sheep dip other than liquid, value not exceeding 6 cents per pound, in boxes or barrels, was rated at fourth class under No. 50, and has been advanced to third class under No. 51. Under No. 50, liquid cattle or sheep dip, value exceeding 6 cents per pound, in bulk or barrels, l. c. l., was rated third class. This article takes a reduced rating of fourth class under No. 51. The carload rate on liquid cattle or sheep dip, value exceeding 6 cents per pound, under No. 50, was class A, minimum weight 36,000 pounds. Under No. 51 this article takes a carload rate of class C, minimum weight 30,000 pounds.

The Commission approves the removal of the valuation clause. Shipments in metal cans in boxes afford a safer and more secure package than when in bulk in barrels and should, therefore, not be given a higher rating.

GRADING AND ROAD-MAKING IMPLEMENTS.

No. 50, page 121, items 7 to 10, inc.

	L.	C.	L.	C.	L.
Road-making machines:					
S. u-----	1	1		A	Min. wt.,
K. d-----	3				24,000
					lbs.

NOTE.—Road rollers, road plows, drag scrapers, wheeled scrapers, dump carts, portable and traction engines, rock crushers, wheelbarrows, street sprinklers, and street sweepers may be shipped in mixed c. l. with road-making machines at class A, min. wt. 24,000 lbs.

No. 51, page 164, item 4.

Grading and road-making implements.—Graders, levelers, road rollers, scarifiers, scrapers, or traction engines, in mixed c. l., with dump cars, dump carts, dump wagons, or road plows, in packages or loose, min. wt. 24,000 lbs., subject to rule 6-B, c. l. _____ A

Under No. 51, wheelbarrows, rock crushers, street sprinklers, and street-sweeping machines have been eliminated from the mixture. While wheelbarrows and street sprinklers are used in other ways than road making, and street sweepers are used on the finished road rather than in road making, still it is reasonable to suppose that these articles are often purchased with road-making machinery, from the same dealers, and are mixed with carload shipments of road-making machinery. We believe that the mixture in No. 51 should include the articles eliminated.

25 L. C. C.

MIXTURE OF WOOD AND IRON WORKING MACHINERY.

No. 50, page 128, items 41 to 45.		No. 51, page 209, item 13.	
	L. C. L. C. L.		
Machinery and Machines:		Sawmill or woodworking machinery or machines, not otherwise indexed by name, in packages, loose, or on skids, and conveyer chains, conveyer-chain brackets or transfer rolls, for the equipment or construction of log, lumber, or refuse conveyers, in packages, mixed, c. l., min. wt., 24,000 lbs., subject to rule 6-B and note 3	A
Wood and iron working machinery, n. o. s., on skids, small detachable parts removed and boxed	1		
Shingle-sawing machines	1	Min. wt., 24,000 lbs.	
Bandsaw machines:			
S. u.	1½		
On skids, small detachable parts removed and boxed	2		

Under No. 50, the carload rate applied to wood-working machinery only when the same was on skids. This restriction has been removed, under No. 51, and the change is, in this respect, approved by the Commission.

No. 51, however, withdraws iron-working machinery from the mixture with wood-working machinery and sawmill machinery. The testimony shows that it is customary to ship mixed carloads of wood-working machinery and iron-working machinery. Item 13, page 209, of No. 51, should be amended so as to permit the mixture of iron-working machinery with the articles therein named.

AGRICULTURAL IMPLEMENTS.

HOE, POTATO-HOOK, OR MANURE-HOOK HEADS.

No. 50, page 28, items 22, 23, and 24.		No. 51, page 71, item 15.	
Agricultural implements, hand.—		Agricultural implements, hand.—	
Hoes:		Hoe, Potato-hook or manure-hook heads, in barrels or boxes,	
N. o. s., including rotary hoes, in bundles, boxes, or crates,		l. c. l.	2
l. c. l.	2		
Eye, in barrels, l. c. l.	3		

Carriers justify the change as follows:

In classification No. 50 hoe heads, other than eye hoes, potato-hook, and manure-hook heads, were rated as agricultural implement parts, n. o. s., first class. This rating has been reduced from first to second class on the hoe heads, other than eye, and on the potato and manure hook heads, while the rating on eye hoes has been advanced from third to second class, thus placing all these articles l. c. l. under second class, which is the rating applied to the completed articles. The change referred to results in a uniform rate on the article and parts, and as a substantial reduction is effected thereby we ask that it be approved.

Hoe heads, other than eye hoes, might have been rated in the past as agricultural-implement parts, n. o. s., first class, but it would seem

that probably they should have been rated as hoes, n. o. s., second class. However, no reason appears why all hoe heads, potato-hook and manure-hook heads should not be rated the same. Even if all these, other than the eye hoes, took only second-class ratings under No. 50, rather than first-class ratings, in raising the eye hoes to the same basis the carriers were justified.

DOUBLETREES, EVENERS, NECK YOKES, OR SINGLETREES.

No. 50, page 27, item 59.

Agricultural implement parts.—
Doubletrees, equalizers, neck
yokes, singletrees, and whiffle-
trees:

Finished.....	2
In the white, ironed.....	3

No. 51, page 79, items 8, 11, and 12.

Parts for agricultural implements
other than hand.—Doubletrees,
eveners, neck yokes, or single-
trees:

Wooden, in the white, ironed or not ironed:	
Loose, l. c. l.....	2
In bundles, l. c. l.....	3
In boxes or crates, l. c. l....	3
In packages or loose, c. l., min. wt. 36,000 lbs.....	A
Wooden, finished:	
Loose, l. c. l.....	1
In bundles, l. c. l.....	2
In boxes or crates, l. c. l....	2
In packages or loose, c. l., min. wt. 24,000 lbs.....	A

The carriers in their brief assert that this is merely a change in the packing requirements. Under No. 50 no packing requirements were imposed, as a consequence of which the articles were offered in any condition the shipper cared to put them; whereas under No. 51 the old rating is made to apply on these articles in bundles, boxes or crates, but when shipped loose the rating is advanced one class higher.

No facts appear justifying a deviation in this case from the general rule that articles shipped loose should take higher ratings than when packed. The change will be permitted to become effective.

AMMONIA.

BROMIDE OF AMMONIA.

No. 50, page 46, item 3.

Chemicals and drugs.—Ammonia,
dry, in barrels or boxes, l. c. l.... 2

No. 51, page 84, item 12.

Ammonia, bromide of:

In glass or earthenware, packed in barrels or boxes, l. c. l.....	1
In fiber or metal cans or car- tons, in barrels or boxes, l. c. l.....	1
In bulk in barrels or boxes, l. c. l.....	1

Protest is made against the advance on bromide of ammonia in bulk in barrels or boxes from second to first class, less than carloads. No facts were submitted by the protestants, and the justification offered by the carriers is the value of the article, which is given as 48 to 66 cents per pound. It is contended that the article is principally used for medicinal purposes, and is properly ratable as a drug.

The proposed changes will be permitted to become effective.

CARBONATE OF AMMONIA.

No. 50, page 46, item 2.	No. 51, page 84, item 13.
Chemicals and drugs.—Ammonia, carbonate of, in sacks or barrels; min. c. l. wt., 30,000 lbs.:	Ammonia, carbonate of:
L. c. l.----- 2	In glass or earthenware, packed in barrels or boxes, l. c. l.----- 1
C. l.----- 4	In fiber or metal cans or cartons in barrels or boxes, l. c. l.----- 2
	In bulk in barrels, l. c. l.----- 2

Protest is made against the advance in the less-than-carload rate on carbonate of ammonia in glass or earthenware, packed in barrels or boxes, from second to first class. No facts were submitted by the protestants, but in the brief of the carriers it is stated that the original rating was established on information that the article was used in the manufacture of baking powders, and that investigation discloses that higher grades are used medicinally, these higher grades being shipped in glass or earthenware. The proposed change will be permitted to become effective.

ARSENIC, CRUDE.

No. 50, page 126, item 19.	No. 51, page 86, item 10.
Minerals.—Arsenic, crude, in kegs or barrels.----- 3	Arsenic, crude:
	In sealed cans or cartons in barrels or boxes, l. c. l.----- 2
	In bulk in paper-lined tight barrels, lining sealed, l. c. l.----- 3
	In packages named, c. l., min. wt. 30,000 lbs.----- 4

Protest was made against the proposed advance in the less-than-carload rating on crude arsenic from third to second class in sealed cans or cartons in barrels or boxes. No justification was attempted by the carriers, and the view of the Commission is that such advance is not justified. Crude arsenic in sealed cans or cartons in barrels or boxes is just as secure as in bulk in paper-lined tight barrels with the lining sealed, and should take the same rating.

ASBESTOS BOILER OR PIPE COVERING.

No. 50, page 138, items 35 and 36.

Boiler and pipe covering:

Asbestos and felt and asbestos cement, min. c. l. wt. 30,000 lbs.—	
L. c. l.-----	3
C. l.-----	5
N. o. s., including magnesia boiler and pipe covering, min. c. l. wt. 24,000 lbs.—	
L. c. l.-----	2
C. l.-----	4

No. 51, page 86, item 18.

Asbestos, boiler or pipe covering, in forms:

In barrels, boxes, or crates, l. c. l.-----	2
In packages or loose, c. l. min. wt. 24,000 lbs., subject to rule C-B-----	4

Protest is made against the proposed advances on asbestos boiler-pipe covering. The minimum on asbestos and felt and asbestos cement boiler and pipe covering has been reduced from 30,000 pounds to 24,000 pounds, subject to rule 6-B, and the carload rating advanced from fifth to fourth class. While no evidence has been introduced, the facts are fully presented in the protests. Among these statements is one that this article will load 30,000 pounds. The carriers in their brief suggest that if this can be demonstrated to be a fact as to most manufacturers of these articles they will be willing to undertake a revision of their ratings upon both the straight and combined asbestos pipe coverings by which fifth-class carload ratings will be reestablished. Such a revision should be undertaken.

ASBESTOS BOILER OR PIPE COVERING AND BOILER AND PIPE COVERING

N. O. I. B. N.—MIXTURE.

Protest is made against the proposed elimination in No. 51 of the mixture of asbestos boiler or pipe covering and boiler pipe covering, n. o. i. b. n. The mixture should be restored.

ASBESTOS ROOFING, FLEXIBLE, BITUMINIZED.

No. 50, page 145, item 11.

Roofing.—Prepared (paper, burlap, or felt (including asbestos paper or felt), treated with tar, pitch, asphalt, or other similar filler or binder, coated (or not coated) with gravel, slag, sand, mica, or other similar coatings), in sheets, crated or in rolls, min. c. l. wt. 36,000 lbs.:

L. c. l.-----	4
C. l.-----	5
25 I. C. C.	

No. 51, page 87, item 3.

Asbestos.—Roofing, flexible (bituminized asbestos felt or paper):

In rolls, See Note, l. c. l.-----	3
In rolls. See Note, min. c. l. wt. 36,000-----	5

It is stated in the protest that this character of roofing is in competition with other prepared roofings. It is further stated to be heavier than the other prepared roofings.

The proposed advance will be denied.

BAGS, CRINKLED PAPER.

No. 50, page 143, item 7.			No. 51, page 91, item 23.		
Paper.—Bags:			Bags.—Paper, crinkled:		
			In bales, boxes, bundles, or		
N. o. s., in bundles			crates, l. c. l.....		1
or boxes.....	3	Min. wt. 36,000	In packages, named, c. l., min.		
Crape paper.....	2	lbs.	wt. 12,000 lbs., subject to		
			rule 6-B.....		2

It is proposed to advance the less-than-carload rating on crinkled paper bags from third and second to first class, and the carload rating from fifth to second class, with a reduction in the minimum from 36,000 to 12,000 pounds. The carriers, in their brief, justify the changes upon the ground that the uniform committee found that crinkled paper bags are very bulky and that a minimum weight of 12,000 pounds would be reasonable for a 36-foot car. The recommendation of the uniform committee was apparently adopted, and the carload rating was advanced from fifth to second class. The less-than-carload rating was advanced from third and second to first class, apparently to preserve the relationship between the carload and less-than-carload rating. Southern classification No. 39 names an any-quantity rating of second class on crinkled paper bags, while official classification No. 38 names upon this commodity a less-than-carload rating of first class and a carload rating of third class, with a minimum of 12,000 pounds. In view of the apparent uniformity in the minimum in western and official classifications, the changes on crinkled paper bags will be permitted to become effective.

PAPER BAGS—MIXTURE WITH WRAPPING PAPER.

Under No. 50 all paper bags were permitted to be mixed in carloads with wrapping paper, taking fifth-class rates, minimum, 36,000 pounds, and also with tissue wrapping paper at fifth class, minimum carload weight, 36,000 pounds. Under No. 51 the mixture has been broken. Protest has been made against the elimination of the mixture, but no facts are stated in the protest other than that commodity rates permitting the above mixture will, in the course of time, be affected by the change in the classification.

The mixture should be restored.

25 I. C. C.

BAKERY GOODS—BAKING POWDER.

No. 50, page 88, item 54.

Groceries. — Baking powder and baking powder compound:

In glass, boxed,		
min. c. l. wt.		
24,000 lbs.....	1	3
In packages,		
n. o. s.....	3	4
In pulp board		
boxes, with tin		
tops and bottoms,		
boxed	3	Min. wt.
		30,000
		lbs.

No. 51, page 92, item 18.

Baking powder or mixtures for baking powder:

In glass or earthenware,	
packed in barrels or boxes,	
straight or mixed c. l., min.	
wt. 30,000 lbs.....	3
In fiber or metal cans in cartons in barrels or boxes, or in bulk in barrels, straight or mixed c. l., min. wt.	
30,000 lbs.....	4
In glass or earthenware,	
packed in barrels or boxes,	
in fiber or metal cans or cartons in barrels or boxes, or in bulk in barrels, mixed c. l., min. wt. 30,000 lbs.....	3

Protest has been made to the Commission against the increase in the minimum weight on baking powder from 24,000 pounds to 30,000 pounds. Carriers point out that the advance in the minimum applies only to baking powder in glass or earthenware, packed in barrels or boxes, thus putting this article, when so packed, on the same basis as baking powder in other packages. It is admitted that no reason exists for a difference in the minimum upon this article dependent upon the form of package. In their brief carriers contend that the 30,000-pound minimum prescribed can be very readily loaded, and is reasonable. The minimum in both southern classification No. 39 and official classification No. 38 on baking powder in glass or earthenware, packed in barrels or boxes, is 30,000 pounds. The advance in minimum will be permitted.

BAKERY GOODS—CRACKERS, C. L.

No. 50, page 84, item 50.

Groceries.—Crackers, c. l., min. wt.
24,000 lbs.....

4

No. 51, page 92, item 10.

Bakery goods.—Crackers, c. l., min.
wt. 20,000 lbs., sub. to rule 6-B. 4

The change here is a reduction in the minimum from 24,000 to 20,000 pounds and the addition of rule 6-B. Protest has been made against the application of rule 6-B.

The minimum in both official classification No. 38 and southern classification No. 39 on crackers in carloads is 20,000 pounds, made subject to the graduated scale of minimum charges, the former under rule 27 and the latter under rule 24.

In view of the uniformity attained with respect to this item, the change in No. 51 will be permitted to become effective.

25 I. C. C.

BARS, GLASS SETTING.

No. 50, page 81, item 26 et seq.		No. 51, page 98, item 16.	
Glass.—Glass setting or window bars, in packages:		Bars, glass setting:	
Brass.....	2	Copper, brass, or bronze, in bbls., bxs., or crates, l. c. l.	1
Copper.....	1	Iron or steel, in bbls., bxs., or crates, l. c. l.	3
Zinc.....	3		

Protestants ask that copper, brass, and bronze glass-setting bars be placed at third class, as are iron or steel glass-setting bars. The carriers, in their brief, seek to justify the advance on bronze glass-setting bars upon the ground that the value of the brass bars is such as to justify putting them in the same class as copper bars. The description of these articles is the same in all three classifications, but No. 51 places copper, brass, and bronze glass-setting bars in first class, the other two classifications place them at second class. Considering the meager justification of the carriers for the proposed advance, and the opportunity afforded to make the ratings uniform in the three classifications, the Commission is of opinion that brass, copper, and bronze bars should take second class.

BAKERY GOODS—CRACKERS, IN BASKETS.

No. 50, page 84, item 52.		No. 51, page 92, item 10.	
Groceries—Crackers, in baskets with tight wooden covers, l. c. l.		Bakery goods—Crackers:	
	2	In shipping baskets with basketwork covers, l. c. l.	1½
		In shipping baskets with solid wooden covers, l. c. l.	1

The second-class rating in No. 50 applied to crackers in baskets with tight wooden covers. The rating in No. 51, of one and one-half times first class, on crackers in baskets with basketwork covers is a new rating. No 51 provides a rating of first class on crackers in baskets with solid wooden covers. This is an advance from the rating of second class provided in No. 50.

Official classification provides a rating of first class on crackers in baskets with either basketwork or solid wooden covers. Southern classification names a rating of second class on crackers in shipping baskets with basketwork covers, and fourth class on baskets with solid wooden covers. The changes in No. 51 are not disapproved.

BAKERY GOODS—MIXTURE OF MATZOS AND MATZOS MEAL.

Under No. 50 matzos and matzos meal were entitled to be mixed in carloads. No. 51 proposes to eliminate this mixture.

Protestants state that it is impossible to ship straight carloads of either the matzos or matzos meal, even though the minimum has been reduced from 24,000 to 20,000 pounds.

The mixture should be restored.

BEEHIVES AND HONEY-SECTION FRAMES.

No. 50, page 31, item 11.
Beehives, k. d., and honey-box
lumber, min. wt. 36,000 lbs.---- D

No. 51, page 94, item 18.
Bees and bee supplies.—Behives, s.u.
or k. d., and honey-section frames
or boxes, k. d., in packages named,
for l. c. l. shipments mixed c. l.
min. wt. 30,000 lbs.----- C

The mixed-carload rating on beehives and honey-section frames has been advanced from class D to class C, and the minimum reduced from 36,000 to 30,000 pounds.

In their brief the carriers say that under No. 50 honey-section frames and boxes were not specifically provided for, provision having been made only for honey-box lumber. The carriers assert that class C is established thereon, as it is very high-grade box material made of basswood, planed, polished, and dovetailed, and is not properly ratable at less than class C. It is contended that class-C rating is lower than that on analogous items, such as berry boxes, k. d., and wooden packing boxes, k. d., which are rated at class B and which rating should be made applicable on the honey boxes, frames, and hives, the latter being more valuable than the first-named items. It is stated that the manufacturers quote 250 sections, weight 18 pounds, \$1.37, making the value 7.6 cents per pound.

The protestants contend that these articles are never shipped set up, but always knocked down. It is further stated that in mixed carloads the greater proportion of the shipment consists of beehives, which are of less value than the honey-section frames or boxes. As to the values, it is contended that the carriers have proceeded upon the retail values alone, which are much higher than the manufacturers' prices. The prices upon which the protestants consider the classification should be based are given as 4.2 cents per pound for beehives, k. d., and 5.3 cents per pound for the honey sections or frames. Per cubic foot, the values are 65½ cents for the beehives and \$1.08 for the honey boxes, k. d. flat; the weights per cubic foot are 15.08 and 22 pounds, respectively. It will be observed that upon the basis of these figures the honey sections, while more valuable per cubic foot, are greater in weight per cubic foot than the beehives.

It is stated that the constituent elements of these articles are pine and basswood lumber, costing from \$15 to \$29 per thousand feet.

Upon the facts presented, the Commission is of opinion that the proposed changes may become effective.

BLACKS, LAMP, C. L.

No. 50, page 141, item 6.
Paints and varnish.—Lamp and
carbon black, in barrels, or
casks, min. c. l. wt. 10,000 lbs.,
subject to rule 6-B----- 2
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No. 51, page 95, item 34.
Blacks, dry, gas or lamp, in bags,
barrels, or boxes, c. l. mint. wt.
15,000 lbs.. subject to rule 6-B. 2

No. 51 provides an increase in the minimum on lampblack in carloads from 10,000 to 15,000 pounds. This change will be permitted to become effective.

BLUE-PRINT MACHINES.

No. 50, page 29, item 34.	No. 51, page 197, item 18.
Artists' and photographers' materials.—Blue-print machines, k. d., boxed..... 1½	Blue-print machines, in boxes.... D1

The justification of the carriers is that the uniform classification committee found that no saving of space was accomplished by knocking the machines down, and that considering the fragile nature of some of their parts, their value and bulk, the proposed rating is reasonable. The shippers contend that the principal manufacturer of these machines knocks them down and puts the parts into separate boxes, and that when so packed the article is not fragile. It is further contended that no parts of the machine, if shipped separately, would take higher than first-class ratings. Tables were submitted showing the contents, weights, and dimensions of the separate packages. The heaviest single package contains two semicylindrical glass plates, weighing 350 pounds, and packed in a box 69½ by 38 by 24 inches, which, when shipped separately, would take first class. Three of the cases weigh in the aggregate 600 pounds, and contain what is practically machinery, occupying no more space than the ordinary run of machinery.

As indicated, the fact that part of the article consists of glass is urged by the carriers as one reason for the advance; yet glass takes first-class rates. These facts suggest the impropriety of this advance.

BOILER DOORS.

No. 50, page 93, item 12.	No. 51, page 98, item 24.
Iron and steel, and articles.—Boiler heads, ends, and doors, l. c. l..... 4	Boiler parts, iron or steel.—Doors, with or without frames: Weighing each less than 50 lbs., loose, l. c. l..... 1 Weighing each 50 lbs. or over, l. c. l..... 4

Protest has been made against the proposed increase in the less-than-carload rating on boiler doors, each weighing less than 50 pounds, from fourth to first class. It is claimed that there never has been any damage claim on this article, and the proposed advance is considered unreasonable. The carriers attempt to justify the advance on the ground that this article has been placed in the same class as castings weighing less than 100 pounds. The carriers further state

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that very few of these doors weigh less than 50 pounds, the smaller size (10 by 16 inches) weighing 60 pounds each.

While it is probably true that boiler doors are castings, it does not follow that the "castings, n. o. i. b. n." rating should be applied thereto. There are many articles in the classification which are nothing but casting and which are rated less than first class. The "casting, n. o. i. b. n." item covers articles upon which specific ratings have not been made, and is in itself no measure of the reasonableness of the rating on boiler doors so long as many lower specific ratings on various castings exist. To justify the proposed advance on boiler doors the carriers should be able to show some facts indicating a difference between them and other castings upon which ratings lower than first class are applied. This change is denied.

BOLTS AND NUTS.

No. 50, page 35, item 32.

No. 51, page 99, item 6.

Brass articles.—Bolts, in barrels,
boxes, casks, or kegs, l. c. 1. 2

Bolts or nuts, nickel plated, in
barrels or boxes, l. c. 1. 1

The protest against this item is against the proposed advance on nickel-plated bolts or nuts from second class to first class. No specific item existed in No. 50 prescribing a rating on the nickel-plated bolts or nuts, nor is it known exactly under which item they moved. Item No. 32, page 35, of No. 50, named a second-class rating on brass bolts. A nickel-plated brass bolt is a "brass bolt," and would be entitled to move under such a description in the absence of any other more specific. However, it appears that second-class rates have actually been applied, and the complaint is that now it is proposed to impose first-class rates. The probable reason for the proposed increase in the rating on nickel-plated brass bolts or nuts is their value, compared with the value of other than nickel-plated bolts or nuts. Value is a factor which may properly be given consideration in classification making, but it should not be given such weight as to produce different ratings on analogous articles competing with each other when there is only a slight difference in their values. The plating of brass bolts or nuts may enhance their value somewhat, but not to such an extent as to warrant a rating one class higher than when not plated. The classification contains several illustrations of the same rating on plated and unplated brass articles. One of these is broad enough to include bolts and nuts were they not otherwise indexed by name, it being item No. 1, p. 249, No. 51:

Plumbers' goods.—Fittings, n. o. i. b. n., for bathtubs, drinking fountains, lavatories, laundry tubs, shower baths, sinks, urinals, water-closets, or water-closet tanks: Other than iron or steel or iron or steel and brass combined, in barrels or boxes, class 2.

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This item covers those fittings made of nickel-plated brass which are used extensively in the plumbing trade. No distinction in rating whatever on this entire line of goods is predicated upon the fact that they may be nickel plated. Another illustration of the same rating on nickel-plated articles as on those not plated is afforded by item 40, p. 266, of No. 51:

Screws, copper, brass, or bronze, in barrels or boxes, class 2.

A brass, copper, or bronze screw with its head nickel plated would be included in this description in the absence of any other more specific. But if there should be any doubt about this, it is certain that item 1 on the next page (267) would cover nickel-plated screws at second-class rating. The item reads:

Screws, n. o. 1. b. n., in barrels or boxes, class 2.

Official classification No. 38 gives the same rating on nickel plated as on unplated bolts or nuts, and the rating is only one class higher when they are silver plated. This change must be denied.

CHEESE BOXES.

No. 50, page 191, item 49.	No. 51, page 102, item 5.
Woodenware and wood-fiber ware.—	Boxes, cheese (cheese hoops),
Boxes, cheese:	wooden:
N. o. s., l. c. l.----- 1	Loose, l. c. l.----- 1½
In boxes, barrels, or crates.... 2	In crates, l. c. l.----- 1
In c. l., min. wt. 15,000 lbs., subject to rule 6-B----- 4	In packages or loose, c. l., min. wt. 10,000 lbs., subject to rule 6-B----- 2

Protest is made against the advances in both the less-than-carload and carload rates, but more particularly against the carload rates. The carload rate was advanced from fourth to second class, with a reduction in the minimum from 15,000 to 10,000 pounds. The protestant contends that 15,000 pounds is a fair minimum, and that fourth-class rates applicable thereto would be reasonable.

The carriers' justification consists of the fact that these articles are light and bulky, and, compared with other boxes, the ratings prescribed are reasonable. The Commission is of opinion that the carriers have not justified the proposed advance.

AUTOMOBILE TIRE CHAINS.

No. 50, page 185, item 19.	No. 51, page 116, item 15.
Vehicles, parts of.—Self-propelling vehicle parts:	Chains, automobile tire, in bar- rels or boxes----- 1
Chains, n. o. s.----- 2	
No. 50, page 186, item 8.	
Vehicle, parts of.—Tire chains, boxed----- 1	

Complainant states that automobile tire chains have been accepted by the carriers under item 19, p. 185, taking second-class rates. Complainant recognizes that there is a rating of first class on "tire chains" carried in item 3, p. 186, of No. 50, but contends that its application is ambiguous in view of the second-class rating on the self-propelling vehicle chains. Carriers contend that there has been no change in the ratings properly applicable to this article, and that if second-class ratings have been applied it was unlawful. This is correct. The Commission has always applied the rule that a specific rating applies rather than a general rating carried in the same classification, even though the general rating be lower. The rule that the shipper shall be entitled to the benefit of the lower of two conflicting rates in the same tariff applies only in the absence of any rating which by settled rules of tariff construction would apply to the exclusion of others. There having been no change no order is required.

CLAM JUICE.

No. 50, page 69, item 15.	No. 51, page 118, item 12.
Fish.—Clam broth and clam juice, in tin, boxed, l. c. l.----- 4	Clam juice: In glass or earthenware, packed in barrels or boxes, l. c. l.----- 3 In metal cans, in barrels or boxes, l. c. l.----- 3

Carriers' brief contains no justification for the change and none is apparent. It will be denied.

COMPOSITION BOARD.

No. 50, page 51, item 58.	No. 51, page 96, item 25.
Compoboard, min. c. l. wt. 36,000 lbs ----- D	Boards, composition (combined wood and fiber board or straw- board), in packages, c. l. min. wt. 36,000 lbs----- B

Carriers state as the reason for the advance that the rating on the manufactured article was lower than on the materials from which it was made, pulpboard being rated at fifth class, and wood veneer class B. It is contended that class-B rating, which applies on the wood that forms the larger portion of the combined article, is reasonable.

The protestant contends that this is not true of "compoboard" which is composed of paper and wood principally, both taking a lower rating than the finished product.

The change may stand.

POULTRY SHIPPING COOPS OR CRATES.

No. 50, page 40, item 36.	
Carriers, empty, new.—Chicken	
coops, compactly folded, k. d. flat	
or with bottoms or tops detached	
and bottoms nested, min. c. l. wt.	
80,000 lbs.:	
L. c. l.-----	2
C. l.-----	B

No. 51, page 122, item 28.	
Coops or crates, poultry shipping,	
wood or metal, or wood and	
metal combined:	
S. u., in packages or loose,	D1
l. c. l.-----	
K. d., tops or bottoms detached,	2
and bodies nested, in bun-	
dles, l. c. l.-----	
In bundles or loose, straight	8
or mixed carload, min. wt.	
14,000 lbs., subject to rule	
6-B, c. l.-----	
K. d. flat or folded flat:	2
In bundles, l. c. l.-----	
In bundles or loose,	4
straight or mixed c. l.,	
min. wt. 20,000 lbs., sub-	
ject to rule 6-B, c. l.---	

The minimum of 80,000 pounds prescribed in No. 50 for chicken coops compactly folded k. d. flat or tops and bottoms detached and bottoms nested, taking a rating of class B, has been reduced to 14,000 pounds, k. d. tops or bottoms detached and bodies nested, and a third-class rating prescribed, and to 20,000 pounds k. d. flat or folded flat, and a rating of fourth class provided therefor.

The carriers in their brief contend that the minima prescribed were the result of investigations of the uniform committee, and that, considering their lowness, the ratings were advanced as above stated. This change will be allowed.

COPPER VESSELS, N. O. I. B. N.

No. 50, page 54, item 5 et seq.	
Copper articles.—Copper vessels,	
n. o. s., including copper cheese	
kettles:	
N. o. s.-----	1½
In boxes or barrels-----	1

No. 51, page 124, item 6.	
Copper, brass, or bronze.—Vessels,	
n. o. i. b. n.:	
Not nested, in barrels or	1½
boxes-----	
Nested, in barrels or boxes---	1

The protest is made against the advance on copper vessels, n. o. i. b. n.—which is the only rating applicable to copper teakettles, copper teapots, copper coffeepots, etc.—principally because of the alleged impracticability of complying with the new definition of “nested” carried in rule 10 of No. 51. Carriers’ brief states in substance that the advance on these articles not nested is made because of their value and bulky nature and because copper vessels, such as kettles, tea and coffee pots, etc., not nested, are properly rated at one and one-half times first class, which rating is one class higher than that on the same articles made of tin which are of very much lower value. The record does not disclose the relative values of copper articles as compared with those made of tin, but considering the differences in

the space occupied the rating "not nested" may properly be higher than that "nested." Both southern classification No. 39 and official classification No. 38 name first-class ratings on these articles not nested and second class nested. This change may go into effect.

CORNCRIBS, PORTABLE.

No. 50, page 191, item 37.

Wire articles.—Wire and wood
(combined) material for porta-
ble corncribs and granaries, min.
wt. 24,000 lbs.-----

C

No. 51, page 126, item 9.

Corncribs, portable, combined wire
and wood, in packages named,
min. 20,000 lbs., subject to rule

6-B -----

5

It is stated in the brief of the carriers that the committee on uniform classification reduced the minimum weight from 24,000 to 20,000 pounds and applied rule 6-B, as it was found that 20,000 pounds was a reasonable loading for a 36-foot car. It is further stated that the carriers advanced the rating from class C to fifth class because it was considered that class C rating was unreasonably low for such a light loading.

The protestant submits that from 24,000 to 26,000 pounds can be and usually is loaded in a 40-foot car, the minimum upon which, by the application of rule 6-B, would be 22,400 pounds. There having been no necessity for reducing the minimum, it is contended the advanced rating is unreasonable.

The necessity for the reduction in minimum should be established and data on values submitted before this change is approved.

CUTLERY.

No. 50, page 58, items 1 and 2.

Cutlery (not plated), n. o. s., in-
cluding sheep shears and hair
and horse clippers, boxed----- 2
Cutlery, blades or handles plated
or sterling silver, boxed----- 1½

No. 51, page 130, items 4 and 5.

Cutlery, not plated nor silver
trimmed, n. o. i. b. n., including
sheep shears and hair and horse
clippers, in bbls. or bxs----- 2
Cutlery, blades or handles plated
or of sterling silver or silver
trimmed, in bbls. or bxs----- 1½

Under No. 50 silver-trimmed cutlery was accepted at second-class ratings. The change in the description has the effect of raising the rating from second to one and one-half times first class. Complaint is made that the advance doubles the rate to some territory and that it applies on practically the entire line of table and pocket cutlery for the small dealer. The carriers maintain that silver-trimmed cutlery is properly rated the same as silver plated, inasmuch as some of the silver-trimmed goods are more valuable than the silver plated. In official classification No. 38, page 85, item 18, the rating is as follows:

Cutlery, n. o. s. (see note):

Plated, in packages----- 1
Not plated, in packages----- 2

NOTE.—Sterling-silver cutlery not taken.

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In southern classification No. 39 the following ratings appear:

Page 71, item 28—Cutlery, in barrels or boxes..... 1

Page 158, item 19—Silver-trimmed tableware, n. o. s., in barrels or boxes... D1

The descriptions and ratings in the three classifications are so different that comparisons can not readily be made. In official territory the silver-trimmed cutlery takes a lower rating than the silver-plated cutlery. In southern territory plated and not plated cutlery take the same rating, but silver-trimmed tableware takes double first class. It is not clear that this item would cover silver-trimmed table cutlery, in view of the rating provided for cutlery. We shall not disapprove this change.

DRESSING OR BLACKING.

No. 50, p. 31, item 51 et seq.

Blackening.—Harness blackening, leather dressing, and harness oil, n. o. s.:

Invoice value exceeding 50 cents per gallon or value not stated—

N. o. s. in boxes or kegs.....	L. C. L.	C. L.
In glass or stone, in barrels or boxes.....	1	Min. wt.
In cans, jacketed.	1½	20,000 lbs.
In flat-top cans, completely enclosed in wood.	1	3
In bulk in barrels.	1	

Invoice value not exceeding 50 cents per gallon and so receipted for—

N. o. s. in boxes or kegs.....	2	Min. wt.
In glass or stone, in barrels or boxes.....	1	30,000 lbs.
In cans, jacketed.	1½	4
In flat-top cans, completely enclosed in wood.	2	
In bulk in barrels.	2	

Shoe blacking, dressing, or polish:

N. o. s. in boxes or kegs.....	2
In glass or stone, in boxes or barrels.....	1

No. 51, p. 132, item 7.

Dressing or blacking.—Curi-ers', harness, shoe, or leather, other than belt dressing, liquid:

In glass or earthenware, packed in barrels or boxes.....	L. C. L.	C. L.
In metal cans partially jacketed.....	1	D1
In metal cans completely jacketed.....	1	
In metal cans in crates..	1½	
In metal cans in barrels or boxes.....	1	
In bulk in barrels.....	1	
In packages named, straight or mixed, c. l., min. wt., 30,000 pounds.....	4	

The change protested against is the proposed increase from second to first class in the rating on liquid blackings or dressings valued at 50 cents per gallon or under, in metal cans or in bulk in barrels, less than carloads.

The carriers in their brief contend that the bulk of the blackings are valued at 50 cents or over per gallon, and that in eliminating the valuation rating in No. 51 and putting all liquid blackings on the same basis reasonable ratings have been provided. The bulk of the blacking or dressing appears to average higher than 50 cents per gallon. The carload rating when valued over 50 cents per gallon has been reduced from third to fourth class, though the minimum was increased from 20,000 to 30,000 pounds. This places all the blackings in carloads upon an equal basis. The changes will be permitted to become effective.

DUMB-WAITERS.

No. 50, page 116, item 19.

Machinery and machines.—Hoisting machines, freight and passenger, including dumb-waiters:
 S. u., l. c. l.----- D1
 K. d., as follows: Parts of,
 n. o. s., l. c. l.----- 1

No. 51, page 183, item 3.

Dumb-waiters:
 S. u., in boxes or crates----- D1
 K. d., in boxes or crates----- 1

No. 50 contained no packing specifications for dumb-waiters; under No. 51 the ratings formerly applicable now apply only in boxes or crates. Complaint is made that if shipped set up in bundles or loose, the rating, under rule 8 of No. 51, will be two and one-half times first class.

It is difficult to see why these articles should be shipped set up, loose, or in bundles. The rating sought to be prescribed does not appear to be unreasonable. If shipped loose or in bundles knocked down, the rating would be one and one-half times first class. This rating does not appear to be out of line with those prescribed in both southern and official classifications, which are one and one-half times first, s. u., and second, k. d., in boxes or crates.

ETHER, BUTYRIC.

No. 50, sup. 8, page 20, item 82.

Chemicals and drugs.—Ether, butyric, in carboys----- D1

No. 51, page 183, items 34 and 35.

Ether, butyric:
 In carboys----- 2½
 In glass packed in barrels or
 boxes, or in metal cans in
 barrels or boxes----- D1

Protest has been made against the change proposed in the rating on butyric ether. It is contended that double first class is charged on 25 I. C. C.

all other commodities in carboys and that the rating on this article in glass should be first class.

In their brief the carriers seek to justify the proposed increase on account of the dangerous character of the package and contents and the value of the article, which is from \$1 to \$1.75 per pound.

In southern classification No. 39, butyric ether is one and one-half times first in carboys, and first in glass or metal cans in barrels or boxes. In official classification No. 38 it is double first in carboys and first in glass or metal cans in barrels or boxes.

The opinion of the Commission is that the advance on butyric ether in carboys has not been justified and that, in the interest of uniformity, shipments packed in glass in barrels or boxes should be rated first class.

FELTS, ETC.

No. 50, page 124, item 45.	No. 51, page 141, item 8.
Mattress stock, or mattress sheets (cotton) and cotton linters, made up into sheets for mattresses, in bales or sacks, min. c. l. wt. 10,000 lbs., subject to rule 6-B:	Felts, mattress or upholstering cotton, in bales, l. c. l. _____ 1
L. c. l. _____ 1	
C. l. _____ 2	

In their brief the carriers state that the carload rating is eliminated because it is unreasonable to provide lower ratings on cotton felts in lots of 10,000 pounds or more than the ratings applicable on the same quantity of cotton from which felts are made.

We do not think this justifies the elimination of a carload rating. Because cotton is rated first class, any quantity, is not of itself a justification for the elimination of a carload rating upon cotton mattress felts if carload quantities are offered for shipment. The carload rating on cotton mattress or upholstering felts should be restored.

FLAX FIBER.

No. 50, page 68, item 6.	No. 51, page 143, item 15.
Fiber.—Flax fiber, flax moss, and tow, in bales _____ 2	Fiber, flax : In bales not machine pressed, l. c. l. _____ D1 In machine-pressed bales, l. c. l. _____ 2

The rating on this article in bales not machine pressed is advanced on account of the bulky nature and light weight of the bales as compared with the machine-pressed bale, the standard package for shipment. It may go into effect.

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FIBER, CHEMICALLY HARDENED.

No. 50, page 68, item 19.		No. 51, page 144, item 4.	
Fiber.—Vulcanized fiber.....	8	Fiber, chemically hardened.—Flexible or hard, such as fibreoid, leatheroid, or vulcanized fiber; rods, sheets, sticks, or tubes:	
No. 50, page 108, item 46.		In bags and bundles, l. c. 1....	1
Leather and articles of.—Leatheroid, leatherboard, and fibreoid,		In boxes or crates, l. c. 1....	2
l. c. 1.....	8		

This material was rated in No. 50 the same as pulpboard or strawboard, which, it is contended, is too low when the values and the uses to which it is put are considered. It is stated that the material enters largely into the manufacture of electrical apparatus and is used also in the manufacture of salesmen's sample cases, trunks, etc. No reason is apparent for refusing to allow this change.

WOODEN FILLERS.

No. 50, page 84, item 8.		No. 51, page 144, item 12.	
Bottle wrappers.—Wood partition bottle packing, flat, in boxes or bundles, l. c. 1.....	8	Fillers or partition for packing, other than egg-case or egg-carrier fillers.—Wooden, k. d. flat, or folded flat:	
		In bundles, l. c. 1.....	2
		In boxes or crates, l. c. 1....	3
		In packages named, c. 1., min. wt. 30,000 lbs.....	5

The only item in No. 50 under which wooden fillers or packing could move is item 3, p. 34 above. No. 51 names a second-class rating in bundles, leaving the third-class rating in effect on the article in boxes.

A higher rating on an article in bundles than in boxes or crates appears on its face to be justified, and the change will be permitted to become effective.

FLOCKS.

No. 50, page 162, item 24.		No. 51, page 146, item 14.	
Shoddy, shoddy dust, shear flocks, rope dust, woolen-mill sweepings, and yarn waste:		Flocks, cut or not manufactured:	
In sacks, l. c. 1.....	2	In bags, l. c. 1.....	1
In bales, l. c. 1.....	3	In bags, min. wt. 12,000 lbs., subject to rule 6-B, c. 1....	2
In sacks or bales, c. 1., min. wt. 30,000 lbs.....	C	In bales not machine pressed, l. c. 1.....	1
		In machine-pressed bales, l. c. 1.....	3
		In bales, min. wt. 24,000 lbs., subject to rule 6-B.....	C

On flocks, cut or not manufactured, the following changes are proposed:

The less-than-carload rating in bags is to be advanced from second to first class and the carload rating from C to second class, with a reduction in the minimum from 30,000 to 12,000 pounds, made subject to rule 6-B. In bales not machine pressed the less-than-carload rating is advanced from third to first class. The carload minimum on bales, machine pressed or not machine pressed, is reduced from 30,000 to 24,000 pounds, made subject to rule 6-B. No justification is made by the carriers for the advance in the less-than-carload rating in bags. The advance in the carload rating in bags is explained by the reduction in the minimum from 30,000 to 12,000 pounds. These changes can not be approved.

The advance in the less-than-carload rating in bales not machine pressed is made on account of the bulk and light weight of the bale when not pressed as compared with the machine-pressed bale. The Commission is of the opinion that the rating should not exceed second class in bales not machine pressed and third class in machine-pressed bales. This is a cheap material, practically waste, and is used in the manufacture of felts. Upon such a commodity first-class rating appears too high. At least, the change has not been justified.

MELONS.—MIXTURE WITH FRUIT OR VEGETABLES.

Under No. 50, melons were listed under the general heading of "vegetables" and were permitted to mix in carloads with many other vegetables. Under No. 51, melons have been placed under the heading of "fresh fruit" and are permitted to mix with all other fresh fruit, with certain specified exceptions, but not with vegetables. While protestants admit that melons are fruit, it is contended that the change disrupts an old and long-established rating. The entire justification of the carriers for the change is that melons are fruit and should be so considered in the matter of mixtures. Whether melons are fruit or vegetables may be left to natural scientists. The mixture should be restored.

RECLINING CHAIRS.

No. 50, page 74, item 32.	No. 51, page 153, item 39.
Furniture.—Chairs, reclining, partially k. d., l. c. l.----- 1	Furniture.—Chairs, reclining, partially k. d., in boxes or crates, l. c. l.----- 1

Protest has been filed against the requirement of crating or boxing reclining chairs partially knocked down. While higher than first-class rates will be applied if the new requirement is not complied with, the question should be considered not only from the stand-

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point of a possible advance in rates, but also from that of the reasonableness of the new packing requirement.

The only facts before the Commission are contained in a letter of protest in which it is stated that a manufacturer of reclining chairs considers the crating or boxing requirement unreasonable, it being contended that chairs partially knocked down reach their destination in better shape wrapped with burlap and packed with excelsior than when crated, due to the possibility of the slats of the crates becoming loosened and being driven into the upholstering of the chairs. No. 51 contains many new package requirements. The change under consideration is said to increase the security of shipping packages. However, the protestant states that burlapping and padding these chairs makes a securer packing than crating. In the absence of proof to the contrary, we can not approve this change.

This conclusion is confirmed by both official and southern classifications, and by reference to other chairs and furniture in all three classifications. The term "wrapped" is used in all three on different articles of furniture, and the same ratings are generally applied to the articles so packed as in boxes or crates. In southern classification No. 39, reclining chairs, folded, take the same rating "wrapped" as "packed," and in official classification No. 38 the rating on reclining chairs, folded, finished, or in the white is the same "wrapped, crated, or boxed."

It is not known precisely what is meant by the term "wrapped." If it means simply incased in any kind of flexible material, such a requirement will not be sufficient to entitle reclining chairs in western territory to the same rating as when boxed or crated. The view of the Commission is that these chairs wrapped with burlap and protected by padding should take the same rating as when boxed or crated. The wording of the description should receive the attention of the carriers.

GLOVES OR MITTENS, HATS OR CAPS, FUR.

No. 50, page 79, items 7 to 11.

Furs and skins, including manufactured furs, as wearing apparel.—Coats, caps, etc.

Furs, n. o. s.:

In sacks or bales	8t	1
In boxes		1
Bear, beaver, fisher, lynx, marten, mink, otter, and seal, in boxes		D1

No. 51, page 162, item 11.

Gloves or mittens, fur, in wooden
boxes only D1

No. 51, page 169, item 35.

Hats or caps, other than millinery, fur, in wooden boxes
only D1

Fur gloves or mittens, hats or caps will not be taken under No. 51 except in wooden boxes, and it is proposed to apply double first-class ratings thereto. Protest has been made against the advance.

It is stated in the complaint that fur caps, gloves, and mittens consist of coney and electric seal, which are very cheap classes of fur and cost less per dozen than the regular cloth articles. The carriers justify the proposed increases on the ground of the light nature and high value of the articles, quoting values and dimensions obtained from a letter of one of the complainants. It is there stated that the value of the fur gloves and mittens is from \$120 to \$165 per case weighing 115 pounds, measuring $34\frac{1}{2}$ by $29\frac{1}{2}$ by $26\frac{1}{2}$ inches. The hats or caps are stated to be worth from \$108 to \$216 per case of 36 by 35 by $34\frac{1}{2}$ inches, weighing 125 pounds.

These prices are for the cheaper, imitation-seal furs. The better grades of fur run higher.

Furs, n. o. s., are first class, but the higher priced furs are specified and generally take double first class.

The Commission is of the opinion that where these fur caps, gloves, mittens, etc., are made of cheap, low-grade furs a rating of double first is too high, but that where made of high-priced furs a rating of double first or greater is not unreasonable.

We suggest that the same distinctions made in the ratings on the furs might be made in the gloves, mittens, caps, etc., dependent upon the grade of fur from which they are made.

GRAPE JUICE, UNFERMENTED.

Complaint is made of the elimination of the mixture of grape juice and other fruit juices. The mixture should be restored.

HAMES, N. O. I. B. N.

The carload rating on hames, n. o. i. b. n., has been eliminated and the mixture with other hames broken.

With reference to the carload rating, carriers state that it was eliminated for the reason that the item covered brass, nickel plated, and fancy hames that are used for coach harness, etc., and which do not move in carload lots. If this assumption is correct there exists no necessity for a carload rating, nor does the elimination of this mixture seem improper.

HAY AND STRAW.

Protest has been made against the proposed application of rule 6-B to hay and straw in carloads.

No objection to the minimum itself has been made. A fair initial minimum and a sliding scale like 6-B should be applied to hay and straw.

IRON SALTS—CARBONATE OF IRON.

No. 51, page 183, item 13.

Iron salts.—Carbonate of iron, in
barrels or boxes, l. c. 1..... 1

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Complaint is made against the imposition of first-class rates on carbonate of iron in less than carloads.

An examination of No. 50 disclosed no rating in terms applicable to this commodity, and in the absence of any information to the contrary the Commission must assume it was accepted as drugs or chemicals, n. o. s., taking first-class rates. There having been no change in No. 51, this protest can receive no further consideration in this proceeding.

SUGAR KETTLES.

No. 50, page 101, item 25.

Kettles.—Caldron and sugar and hog scalders:

L. c. 1.....	3
C. 1., min. wt. 30,000 lbs.....	5

No. 51, page 184, item 17.

Kettles.—Caldron and hog scalders:

In packages or loose, l. c. 1....	3
In packages or loose, straight or mixed, c. 1., min. wt. 30,000 lbs.....	5

No. 51, page 278, item 4.

Stoves, stove furniture, furnaces and parts of.—Hollow ware and stove furniture, made of cast or sheet iron, or steel, but exclusive of enameled sheet-iron articles, and tin or galvanized articles:

Loose or in bundles, l. c. 1....	2
In crates, l. c. 1.....	3
In barrels or boxes, l. c. 1....	4
C. 1., min. wt. 20,000 lbs.....	5

It is complained that "sugar kettles" have been eliminated from the mixture with caldrons and hog scalders, and have no apparent classification in No. 51. The carriers state that they are ratable under item 4, page 278, stove hollow ware, having a minimum of 20,000 pounds, and entitled to mix with stoves, parts, etc. This will not be disapproved.

LEAD SALTS.

No. 50, page 48, item 6.

Lead, sugar or acetate of:

In boxes or bags, l. c. 1.....	2
In casks or barrels, l. c. 1....	4

No. 51, page 187, item 24.

Lead salts.—Acetate of lead (sugar of lead):

In glass or earthenware, packed in barrels or boxes, l. c. 1.....	2
In fiber or metal cans or cartons, in barrels or boxes, l. c. 1.....	2
In bulk in barrels or boxes, l. c. 1.....	4

Protestants claim that acetate of lead in fiber or metal cans or cartons should be at least one class lower than in glass or earthenware. Applying what has been previously said with reference to higher ratings upon articles in fiber, or metal cans, in barrels or boxes, than upon the same articles in bulk, the Commission is of opinion that they should not exceed the rating prescribed for the same article in bulk in barrels or boxes. The rating in glass or earthenware packed in barrels or boxes may stand at second class.

LIME, BUILDING.

It is proposed to increase the minimum weight on building lime from 24,000 to 30,000 pounds. The carriers justify the advance on the ground of uniformity. In official classification the minimum has been reduced from 36,000 to 30,000 pounds. In southern it is 30,000 pounds. This change may go into effect.

CARBONATE OF LIME.

No. 50, page 48, item 14.	No. 51, page 189, item 8.
Chemicals and drugs.—Lime, carbonate of, in barrels or hhd's, l. c. l.-----	Lime (calcium), carbonate of, n. o. i. b. n., in bags, barrels, or boxes, l. c. l.-----
4	2

The carriers justify the advance upon the ground of the value of the article as compared with building lime, it being stated that carbonate of lime runs from 5 to 35 cents per pound.

While undoubtedly there is a very high grade of carbonate of lime valued at 35 cents per pound, the quantity of it moving must be small in comparison with the movement of that of less value.

Southern classification No. 39 rates carbonate of lime, n. o. i. b. n., in bags, barrels, or boxes at first class.

Official classification No. 38, names a third-class rating, in bags, which rating, in the opinion of the Commission, should apply in No. 51, in bags, barrels, or boxes, l. c. l.

PHOSPHATE OF LIME.

No. 50, page 48, item 19.	No. 51, page 189, item 9.
Chemicals and drugs.—Phosphate of lime, in barrels or boxes, l. c. l.-----	Lime (calcium), phosphate of, other than acid phosphate of lime: In cans or cartons in barrels or boxes, l. c. l.----- In bulk in barrels or boxes, l. c. l.-----
4	1 4

Protest is made against the proposed advance on phosphate of lime, other than acid phosphate of lime, from fourth to first class, in
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cans or cartons in barrels or boxes. The carriers attempt to justify the increase upon the ground that the value of the article runs as high as 45 cents per pound for the U. S. P.

Applying what has been said with regard to the ratings which should be applied on the safer and more secure packages, the Commission is of the opinion that the rating on this commodity in cans or cartons, packed in boxes or barrels, should not exceed the rating in bulk in barrels.

ICE-CRUSHING MACHINES.

No. 50, page 117, item 17.		No. 51, page 204, item 10.	
Machinery and machines.—Ice-crushing machines	2	Machinery and machines.—Ice-crushing machines:	
		On skids.....	1
		In boxes or crates.....	1

The carriers justify the change upon the ground that the article is generally shipped on skids and the rating of first class is usually applied on all set up machinery of similar character.

The protestant states that these machines are usually shipped with the fly wheels removed and partly crated; and that their weight in proportion to bulk is great, the frames being made of cast iron or steel. It is further stated that, owing to the purpose for which this machinery is used, it is of rough finish containing in its construction no delicate parts. It is not subject to damage from moisture, and its general nature is practically the same as castings. Comparisons are made with certain other machines, which the protestant considers of a similar character, all of which take second or third class rates. Among these appear clay, coal, and rock-crushing machines.

Provisionally the change may stand.

MAGNESIUM, CARBONATE OR OXIDE OF.

No. 50, page 48, item 27.		No. 51, page 212, item 4.	
Chemicals and drugs.—Magnesia, crude, carbonate of, oxide of, and calcined magnesite, in boxes, bags, barrels, or casks, l. c. l.....	3	Magnesium, carbonate or oxide of (magnesia):	
		In cans or cartons, in barrels or boxes, l. c. l.....	2
		In bags or in bulk, in barrels or boxes, l. c. l.....	3

In the absence of any showing of a difference in the value of the article packed in cans or cartons than in bulk in barrels, we are of opinion that the proposed advance should not be permitted.

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MAGNESIUM, SULPHATE OF.

No. 50, page 49, item 12.	No. 51, page 212, item 8.
Chemicals or drugs.—Salts, epsom (sulphate of magnesia): In boxes, casks, or bags, l. c. l. 2 In tin cans, jacketed, l. c. l. 1	Magnesium, refined sulphate of, or epsom salts: In glass or earthenware, packed in barrels or boxes, l. c. l. 1 In fiber or metal cans or car- tons, in barrels or boxes, l. c. l. 1 In bags, l. c. l. 2 In bulk, in barrels, l. c. l. 2

It is contended by the shippers that while possibly a higher rating on this article in glass might be justified, the rating in cans or cartons should be no higher than in bulk. The carriers have sought to justify the advances upon the ground of the value of the articles. As in the case of other chemicals, there is a high-grade sulphate of magnesium moving in glass or earthenware upon which a rating higher than that in bulk may be justified. However, from the facts before us we think that the rating on sulphate of magnesium in cans or in cartons, in barrels or boxes, should not exceed that in bulk.

MARBLES.

No. 50, page 165, item 15.	No. 51, page 213, items 6 and 7.
Marbles, in boxes, barrels, or casks. 2	Marbles: Clay or glass, in bags, barrels, or boxes 2 Other than clay or glass, in barrels or boxes 1

The carriers justify the change upon the ground that such description covers agate and cornelian marbles, which are much more valuable than the common marbles. The marbles manufactured by the protestant are of hollow steel, very heavy and inexpensive. Under the description proposed in No. 51, they would be compelled to pay first-class rates.

We are of the opinion that the carriers have justified the advance on agate and cornelian marbles, but that the description is too broad in that it covers marbles of a cheaper character which compare with glass or clay marbles. The carriers should revise this item so as to apply first-class rating on agate and cornelian marbles and second-class rating on marbles other than agate and cornelian.

METERS, GAS.

The carriers have proposed to reduce the minimum on gas meters from 30,000 to 20,000 pounds and increase the rating from fourth to third class. The change in minimum weight was recommended by the uniform committee because it is impossible to load gas meters

in excess of 20,000 pounds in a 36-foot car without liability of injury to the adjustment of the meters.

A shipper has protested against 20,000 pounds on the ground that the meters can not safely be loaded beyond 15,000 or 16,000 pounds. In view of the reduction of the minimum weight, the change may become effective.

POWDERED MILK.

No. 50, page 38, item 61.

Canned goods.—Condensed milk, dry or liquid, and evaporated cream:	
In glass, boxed, l. c. l.-----	3
In cans, jacketed, l. c. l.-----	2
In cans, boxed, l. c. l.-----	4
In barrels or half barrels, l. c. l.-----	4
In packages named, also in cans, crated, c. l., min. wt. 36,000 lbs.-----	5

No. 51, page 215, item 8.

Milk, powdered:	
In glass or earthenware, packed in barrels or boxes, l. c. l.-----	1
In glass or earthenware, packed in barrels or boxes, c. l., min. wt. 30,000 lbs.-----	4
In fiber or metal cans in crates, l. c. l.-----	1
In fiber or metal cans in bar- rels or boxes, l. c. l.-----	2
In bulk in barrels, l. c. l.-----	3
In fiber or metal cans in bar- rels, boxes, or crates, or in bulk in barrels, c. l., min. wt. 30,000 lbs.-----	4
In glass or earthenware, packed in barrels or boxes, and in fiber or metal cans in barrels, boxes, or crates, or in bulk in barrels, c. l., min. wt. 30,000 lbs.-----	4

Powdered milk handled in bulk is as cheap as any of the manufactured milks, being consumed principally in large quantities by bakeries; hence we are not convinced of the justification of the advance on powdered milk, nor are we satisfied that the elimination of the mixture is proper.

MINCEMEAT.

No. 50, page 85, item 8.

Groceries.—Mincemeat and crys- tallized pie preparation:	
in cans, boxed, l. c. l.-----	4
In glass, stone, or paper boxes, boxed, l. c. l.-----	4
In barrels, kits, or kegs, l. c. l.-----	4
In buckets, pails, or tubs, l. c. l.-----	1
In buckets, pails, or tubs, boxed, l. c. l.-----	4

No. 51, page 216, item 1.

Mincemeat:	
In earthenware, packed in crates, l. c. l.-----	3
In glass or earthenware, packed in barrels or boxes, l. c. l.-----	4
In pails or tubs, l. c. l.-----	1
In pails or tubs in crates, l. c. l.-----	3
In metal cans or crates, l. c. l.-----	3
In bulk in barrels, or in cans, cartons, pails, or tubs in barrels or boxes, l. c. l.-----	4

Complaint has been made of the elimination of the fourth-class rating on mincemeat in kits. The carriers do not attempt to justify the change in their brief, but in a letter to the railroad commission of Iowa, the chairman of the western classification committee says:

The rating on mincemeat in kits was made on the same basis as mincemeat in pails or tubs. Investigation on the part of the classification committee indicates that mincemeat when packed in a kit is no better package for transportation than the same article when packed in a tub similarly fastened. We certainly would not with propriety apply a lower rating on mincemeat in a kit than is applied in pails or tubs, in crates, which containers when so packed are far superior as a package for transportation purposes.

This is the only statement of fact appearing in the record. Under No. 50 mincemeat in kits was not rated the same as in pails or tubs. The rating in pails or tubs was first class. In pails or tubs *in boxes* the rating was fourth class, the same as the rating on kits.

The petitioner does not ask for a lower rating on mincemeat in kits than in pails or tubs, in crates, but the same rating as was accorded under No. 50, there being no rating on mincemeat in kits in No. 51.

We think that the rating on mincemeat in kits may properly be made the same as on mincemeat in pails or tubs.

MOP HANDLES, WOODEN.

No. 50, page 87, item 23.		No. 51, page 218, item 5.	
Handles, mop (with or without heads) and broom:		Mop and mop parts.—Mop parts, handles, wooden:	
In bundles, l. c. 1.....	3	In boxes, bundles, or crates,	
In boxes or crates, l. c. 1.....	4	l. c. 1.....	3

Protest has been made against several changes in this item. Under No. 50 mop handles were permitted to mix in carloads with other handles. This mixture has been eliminated, and while certain protestants have withdrawn their complaints, others have not. The less-than-carload rating on wooden mop handles in boxes or crates is proposed to be raised from fourth to third class, the same as in bundles, under No. 50. The carriers state:

On mop handles in boxes or crates, the l. c. 1. rating is advanced from fourth to third class, which is one class higher than the lumber from which they are made. The movement of these handles without holders is principally in bundles, which take the third-class rate. * * * Mop handles without holders are a finished product turned from rough lumber, and are properly rated at least one class higher than the rough lumber from which they are made.

In a number of preceding items we have allowed an advance on the ground that bundles were less secure than boxes. In this case carriers

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attempt to advance the rating in boxes to that in bundles. This can not be approved.

MOP HANDLES WITH METAL HOLDERS.

No. 50, page 87, item 28.		No. 51, page 218, item 6.	
Handles, mop (with or without heads) and broom:		Mops and mop parts.—Mop parts, handles with metal holders attached:	
In bundles, l. c. 1.....	3	In bundles, l. c. 1.....	2
In boxes or crates, l. c. 1.....	4	In boxes or crates, l. c. 1.....	3

Protest is made against the proposed advance on mop handles with metal holders attached, in bundles, from third to second class. Carriers say:

The handles with metal holders attached, in boxes or crates, are rated the same as the plain handles, but when in bundles, on account of the increased liability to breakage and damage to the light cast-iron holders, they are rated one class higher than in boxes or crates.

Inasmuch as in the preceding item the restoration of the fourth-class rating on plain wooden mop handles in boxes or crates has been ordered, it is our view that mop handles with metal holders attached, in boxes or crates, should take fourth class, and in bundles, third class.

OILERS.

No. 50, page 174, item 9.		No. 51, page 223, item 14.	
Tin articles.—Tin oilers (hand) with detachable spouts, in boxes, barrels, or crates:		Oilers, hand (oiling cans), in barrels or boxes, l. c. 1.....	1
L. c. 1.....	1		
C. 1., min. wt. 18,000 lbs., subject to rule 6-B.....	4		
No. 50, page 176, items 33 to 35.			
Tools.—Oilers, hand, boxed:			
Automatic.....	1		
N. o. s., metal.....	1		

Tin Oilers in crates have been eliminated from the description in No. 51, resulting in the application of one and one-half times first class when so shipped. So far as the complaint disclosed, these articles do not move in crates.

The description of oilers in No. 51 embraces oilers made of any material. The old carload rating on tin oilers in straight or mixed carloads with tinware has been eliminated. The elimination of the carload rating is justified by the carriers upon the ground that there is no carload movement, and therefore no necessity exists for a carload

rating. On the other hand, one protestant states it does handle this line of goods in carloads and will be seriously affected by the elimination of the carload rating.

We think both the mixture and the carload rating should be restored.

OILS—COD-LIVER OIL.

No. 50, page 182, item 24.	No. 51, page 228, item. 20
Oils.—Cod-liver oil:	Oils.—Cod-liver oil, edible or medicinal:
In glass, boxed, l. c. l.----- 1	In glass or earthenware, packed in barrels or boxes. 1
In bulk in barrels, l. c. l.----- 3	In metal cans in barrels or boxes----- 1
In bulk, in barrels, c. l., min. 4	In bulk in barrels----- 2
wt. 24,000 lbs.-----	

Cod-liver oil, in bulk in barrels, l. c. l., is advanced from third to second class. The carload rating provided in No. 50 is eliminated and a rating of first class in metal cans or boxes has been provided.

Carriers claim that the value of this article ranges from 66½ cents to \$1.25 per gallon, depending upon the quantity purchased. It is contended that consequently it should take a higher rating than petroleum oil, cottonseed oil, lubricating oil, etc. Figures showing relative values have not been brought to our attention.

The Commission is of the opinion that the carriers have not justified the advance from third to second class on cod-liver oil, in bulk in barrels, and in conformity with what has already been said with regard to ratings on the safer and more secure packages, cod-liver oil in metal cans, packed in barrels or boxes, should not take a higher rating than in bulk in barrels. No protest has been received with regard to the elimination of carload rating, and this change will be permitted to stand.

CORN OIL.

Protest is made against the proposed increase in the minimum weight on corn oil in carloads from 26,000 to 30,000 pounds. It is stated that it is impossible to load this weight on the floor of the car and impracticable to make two tiers of barrels.

In a letter to the Railroad Commission of Iowa the chairman of the Western Classification Committee states that actual loadings during one month by a particular firm showed weights from 31,995 to 36,000 pounds, running from 70 to 76 barrels per car. The size of the cars is not given, nor is it stated whether they were double tiered. This change may stand.

SHEATHING, CATTLE-HAIR.

No. 50, sup. 8, page 9, item. 2.

Sheathing (grass or cattle-hair and paper, quilted, or flax-tow and paper (or without paper), in compressed form or quilted), in bundles:

L. c. l.-----	3
C. l. min. wt. 20,000 lbs-----	5

No. 51, page 231, item 6.

Packing.—Boller and pipe covering.—Hair felt, quilted or not quilted:

In bales, boxes, bundles, or rolls, l. c. l.-----	2
In packages named, min. wt. 20,000 lbs., subject to rule 6-B-----	5

No. 51, page 269, item 3.

Sheathing, grass or flax fiber or flax tow and paper, quilted, or flax fiber pressed in sheets or blocks:

In bales, boxes, bundles, or rolls, l. c. l.-----	3
In packages named, c. l., min. wt. 20,000 lbs-----	5

Item 3, page 269, No. 51, eliminates cattle-hair sheathing, which results, according to complainant, in cattle-hair sheathing being forced to take the second-class rating, l. c. l., provided for "hair felt, quilted or not quilted," in item 6, page 231, of No. 51.

The carriers have not justified the elimination of cattle-hair sheathing, and it is the view of the Commission that it should be restored in item 3, page 269, of No. 51.

Item 6, page 231, of No. 51, advances the less-than-carload rating on packing made of hair felt, quilted or not quilted, from third to second class. Protestants allege that this article is in direct competition with other sheathing composed of flax tow and grass and is of the same value. The advance can not be allowed.

CULVERTS.

No. 50, page 147, item 23.

Pipe and fittings.—Culverts, iron or steel, seven (7) gauge ($\frac{1}{8}$ inch) and thicker, min. wt. 30,000 lbs., c. l.-----

	5
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No. 51, page 243, item 10.

Pipes and fittings.—Culverts, iron or steel, s. u. any diameter, nested or not nested, in packages or loose, straight or mixed, c. l. min. wt. 20,000 lbs., subject to rule 6-B-----

	4
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Carriers assert that the descriptions and ratings on culverts were approved by manufacturers, and that 3.8-inch culverts are no longer manufactured.

In view of the reduction in the minimum we shall not disapprove this item.

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SMOKING PIPES, CORN COB OR HICKORY.

No. 50, page 148, item 86, named a carload rating of fourth-class carloads, minimum weight 30,000 pounds, on these pipes, while No. 51 has eliminated the carload rating. The less-than-carload rating of second class was unchanged. The justification of the carriers for the elimination of the carload rating was that no carload movement existed. Protestants insist there is a carload movement, and submit a statement of some carload shipments made. The carload rating should be restored.

PLUMBERS' SUPPLIES.

No. 50, page 149, item 50.	No. 51, page 124, item 7.
Plumbers' materials, n. o. s., in boxes or barrels, l. c. l.----- 2	Copper, brass, or bronze.—Copper, brass, or bronze articles, n. o. l. b. n., in barrels or boxes, l. c. l. 1
No. 50, sup. 4, item 38 cancels item 50, page 149.	No. 51, page 148, item 19.
Plumbers' goods.—Fittings, n. o. s., for bathtubs, drinking fountains, lavatories, laundry tubs, shower baths, sinks, urinals, water-closets, or water-closet tanks.	Plumbers' goods.—Fittings, n. o. l. b. n., for bathtubs, drinking fountains, lavatories, laundry tubs, shower baths, sinks, urinals, water-closets, or water-closet tanks.
Iron or steel, plated, in barrels or boxes ----- 2	Iron or steel, plated, in barrels or boxes ----- 2
Iron or steel, not plated, in barrels or boxes ----- 2	Iron or steel, not plated, in barrels or boxes ----- 2
Iron or steel and brass combined, in barrels or boxes... 2	Iron or steel and brass combined, in barrels or boxes... 2
Other than iron or steel or iron or steel and brass combined, in barrels or boxes... 2	Other than iron or steel or iron or steel and brass combined, in barrels or boxes... 2

Complaint is made against the elimination in No. 51 of the item "plumbers' materials, n. o. s." taking second-class rates. It is claimed that the result will be the application of first-class ratings under item 7, page 124 of No. 51, to many brass articles, such as name plates, seat-menders, brass rings, brass angles, brass flanges, brass repairs, brass plugs, brass covers, and many others.

Item 38 of supplement 4 to No. 50 became effective November 1, 1911, before No. 51 was issued. Consequently there has been no change in No. 51 from the rating in effect at the time of its suspension. Furthermore, plumbers' materials, n. o. i. b. n., will move properly under item 19, page 148 of No. 51 under the heading "plumbers' goods," where the same rating applies as under No. 50.

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BATH TUBS.

No. 50, page 149, item 57.	No. 51, page 245, item 28.
Plumbers' supplies.—Bath tubs:	Plumbers' goods.—China or earthenware.—Bath tubs:
Fire clay, l. c. l.-----	Packed in boxes or crates,
3	l. c. l.-----
C. l. min. wt. 24,000 lbs.-----	1
4	In packages named, min. wt.,
No. 50, supplement 4, item 30, cancels	c. l. 24,000 lbs.-----
item 57, page 149.	3
L. C. L. C. L.	
Plumbers' goods, china or earthenware.—Bath tubs:	
Packed in boxes or crates.	
1	
In packages named, min.	
wt. 24,000 lbs.-----	
3	

Protest was made against the supposed advance in No. 51 in ratings on fire-clay bathtubs.

The item above shown as taken from No. 51, page 245, item 28, appeared in supplement 4 to No. 50, effective November 1, 1911. As stated with regard to item under plumbers' material, the relation of No. 51 to ratings prior to November 1, 1911, can not be considered in this proceeding.

POTASSIUM.

No. 50, page 46, item 15.	No. 51, page 251, item 10.
Ash, pearl, or soda.—Potash, n. o. s., in barrels or casks, or in cans boxed, l. c. l.-----	Potassium (Potash).—Potash or potash salts, n. o. i. b. n.:
4	In glass or earthenware, packed in barrels or boxes,
No. 50, page 47, item 14.	l. c. l.-----
Chemicals and drugs.—Drugs and medicines, n. o. s., in boxes, barrels, or kegs.-----	1
1	In fiber or metal cans or cartons, in barrels or boxes,
	l. c. l.-----
	1
	In bulk in barrels or boxes,
	l. c. l.-----
	1

Protest is made against a supposed advance from fourth to first class on potash, n. o. i. b. n., but the Commission is of the opinion that item 15, page 46, of No. 50, naming a fourth-class rating on pearl or soda ash n. o. s. was not properly applicable to potash n. o. s., and that, therefore, drugs and chemicals being first class under No. 50, there has been no change in this item.

QUASSIA CHIPS.

No. 50, page 59, item 48.	No. 51, page 255, item 5.
Dye woods, including quassia wood, chipped, in bags or barrels, l. c. l.-----	Quassia chips, in bags, bales, barrels, or boxes.-----
3	1
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The protestant states that the value of this article is 3 cents per pound and weighs $12\frac{1}{2}$ pounds per cubic foot; the value per 100 pounds is \$3 and the cubic feet of space occupied by 100 pounds is 8. In the absence of anything appearing in the record indicating that there are any special reasons why this article should take a higher rate than existed in No. 50, the proposed advance must be disapproved.

SODIUM SULPHATE.

No. 50, page 49, item 32.	No. 51, page 272, item 11.
Chemicals and drugs.—Soda, sulphate of (Glauber's salts):	Sodium (soda), sulphate of or glauber's salts:
In boxes, barrels, or casks,	In cans or cartons in barrels
l. c. l.-----	or boxes, l. c. l.----- 1
In bags, l. c. l.-----	In bags, l. c. l.----- 2
C. l., min. weight 36,000 lbs--	In bulk in barrels or boxes,
5	l. c. l.----- 4
	In bags, in bulk, in barrels or boxes, or in bulk, straight or mixed c. l., min. wt. 36,000 lbs-----
	5

In accordance with our previous expression that articles packed in cans or cartons packed in barrels or boxes should not take a higher rating than in bulk in barrels, the proposed increase on sulphate of sodium in cans or cartons in barrels or boxes can not be approved. The less-than-carload rating in bags is an addition, and as this package is undoubtedly less safe and secure than the other packages named, the rating will be permitted to stand.

SODIUM SULPHITE.

No. 50, page 49, item 47.	No. 51, page 272, item 12.
Chemicals and drugs.—Sodium, sulphite of, in barrels, l. c. l.-----	Sodium (soda), sulphite of:
4	In glass or earthenware, packed in barrels or boxes,
	l. c. l.----- 1
	In fiber or metal cans, or cartons in barrels or boxes,
	l. c. l.----- 1
	In bulk in barrels, l. c. l.----- 4

Protestants contend that the value of this article runs from 3 to 6 cents per pound. The carriers maintain that while the value of the article shipped in bulk and used for removing wool from sheep pelts is 2 cents per pound, the material packed in glass runs as high as 15 to 28 cents per pound. We think that the rating in glass may

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be higher than in bulk, but the rating in cans or cartons in barrels or boxes should in this case be no higher than in bulk.

SOUP POWDERS OR TABLETS.

No. 50, page 85, item 39.		No. 51, page 273, item 2.	
Soup tablets and soup powders, in tin or paper packages, boxed----	4	Soup powders or tablets in barrels or boxes-----	1

In their brief the carriers say, on page 406:

The carriers advanced the rating from fourth to first class, as the valuation of these commodities justifies first-class rating. The carriers found upon investigation that the bulk of that traffic has been moving as beef extract or bouillon cubes, which are rated under item 12, page 66, classification No. 50, at first class. The carriers wrote complainant, asking what brands of soup tablet they handle, and they received advice that they handle Armour's bouillon cubes. Prices of the cubes were then secured from Armour & Company, and the average value of the different styles of packages used, is 68.6 cents per pound, as packed for shipment. Armour & Company advise that they describe their cubes for shipment as bouillon extract, which is ratable at first class.

Advance will not be disapproved.

STEARIC ACID.

No. 50, page 140, item 24.		No. 51, page 276, item 1.	
Packing-house products.—Stearic acid, l. c. l.-----	4	Stearic acid:	
		In bags, l. c. l.-----	3
		In barrels, l. c. l.-----	4

The justification of the carriers is as follows: This acid is used largely in the manufacture of candles. It is obtained from the more solid animal fats, chiefly tallow, and in appearance is similar to candle grease. The melting point of commercial stearic acid runs as low as 132.8° F. The rating when in bags is advanced on account of the undesirability of the package as a shipping container, and because of the risk due to the liability of the acid melting in the bag and damaging other freight in the car.

The protestant submits the following: Very little, if any, stearic acid is now shipped in barrels, bags being almost universally used. Bags make a better package, and their use is advantageous to the railroads, because they can be loaded into a car without waste of space.

The bag container is less secure than a barrel or cask; but while many articles take higher ratings in bags than in barrels or casks, there are also many taking the same rating. The protestants are insistent that the bag is a secure package for the shipment of stearic acid, and any risk due to its relative insecurity as compared with the

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barrel is offset by the fact that bags pack closely and are easily handled, weighing 200 pounds.

We think the change should stand.

SCYTHE STONES, N. O. I. B. N.

No. 50, page 26, item 47.	No. 51, page 277, item 9.
Agricultural implements.—Scythe stones, in boxes, barrels, or crates:	Stones.—Scythe stones, n. o. i. b. n.:
L. c. l.----- 3	In barrels or boxes, l. c. l.----- 3
C. l., min. wt. 24,000 lbs.----- 3	In packages named, straight or mixed, c. l., min. wt. 36,000 lbs.----- 5

The proposed change in minimum should be disposed of on the basis of what we have said elsewhere on the general question of minimum weights. The mixture should be restored.

SCYTHE STONES.

No. 50, page 26, item 47.	No. 51, page 277, item 5.
Agricultural implements.—Scythe stones, in boxes, barrels, or crates:	Stones, scythe.—Alundum, carborundum, corundum, or emery:
L. c. l.----- 3	In barrels or boxes, l. c. l.----- 2
C. l., min. wt. 24,000 lbs.----- 3	In packages named, straight or mixed c. l., min. wt. 36,000 lbs.----- 4

The carriers in their brief state that the rating on scythe stones in crates was eliminated because the uniform committee was advised by manufacturers that crates were not suitable packages and are never used. In No. 51 the rating was reduced from third class, minimum 24,000 pounds, to fourth class, minimum 36,000 pounds. The change will be permitted.

SULPHUR CANDLES.

No. 50, page 50, item 4.	No. 51, page 281, item 11.
Chemicals and drugs.—Sulphur and sulphur candles:	Sulphur candles, in barrels or boxes, l. c. l.----- 2
In boxes or kegs, or in pails with tight wooden covers, l. c. l.----- 2	
In sacks, barrels, or hog-heads, l. c. l.----- 4	

The protestants state that the density of the candles is greater than that of the bulk sulphur; yet they are in the nature of a manufactured product and may properly take a higher rating than the material from which they are made.

CLOTH TAGS.

The carload rating on cloth tags has been eliminated. If these goods are offered in carload quantities, the carload rating should be restored.

PAPER TAGS.

Protest is made against the proposed increase in the minimum on paper tags from 24,000 to 30,000 pounds. Interested parties should keep a record of their shipments, and if experience shows the new minimum is too high it can be modified accordingly.

TIN TAGS.

Complaint is made of the increase in the minimum on this article from 24,000 to 36,000 pounds. In official classification territory it has moved under a 36,000 pound minimum. What was said under the preceding item applies here.

TIN SALTS—OXIDE OF TIN.

No. 50, page 142, item 15.		No. 51, page 287, item 5.	
Paints and varnish.—Oxide of tin, in sacks, casks, or barrels:		Oxide of tin:	
L. c. 1.....	4	In barrels or bags, l. c. 1.....	2
C. l., min. wt. 36,000 lbs.....	5	In packages named, minimum 36,000 lbs.....	4

Protest is made against the carload and less-than-carload ratings on this article proposed in No. 51. The carriers justify the change upon the ground that this article was improperly rated as a paint, its use being principally as a polish, the values of which run from 45 cents to \$1.20 per pound, depending upon the grade and quantity purchased. This change will not be disapproved.

TOOLS—BITS.

No. 50, page 114, item 11.		No. 51, page 288, item 9 et seq.	
Machinery and machines.—Drill bits (for pneumatic drills) boxed)		Tools, bits, auger, or drill, iron or steel, coal, rock, or well drill- ing:	
	8	In bundles.....	1
		In crates.....	1
		In boxes.....	2

The complainant states that a third-class rating was applied under No. 50. It is contended that bits are but little more valuable than the steel from which they are made and should take lower ratings than those prescribed in No. 51.

The Commission is of the opinion that steel bits may take a higher rating than the raw material from which they are made. The advances may become effective.

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TREE TRANSPLANTERS.

No. 50, page 177, item 22.		No. 51, page 290, item 6.	
Tree transplanters, k. d., in pieces	8	Tree transplanters:	
		On wheels, loose	1
		In boxes	1

Carriers justify the change upon the ground that their investigations disclosed only one manufacturer of these articles who advised them that there was no k. d. movement. The change will be permitted to become effective.

TURPENTINE.

No. 50, page 105, item 48.		No. 51, page 291, item 21.	
Turpentine, including petroleum turpentine:		Turpentine.—Spirits of or wood turpentine:	
In glass, cans, or stone jugs, not packed, <i>not taken</i> .		In glass or earthenware, packed in bbls. or boxes, l. c. l.	1
In boxes, or in cans (square or round) boxed, or in tin kegs with flat tops and inclosed in veneer or sheet-metal jackets, l. c. l.	1	In metal cans completely packed, l. c. l.	1
In barrels or iron drums, l. c. l.	2	In metal cans in crates, l. c. l.	1½
		In metal cans in barrels or boxes, l. c. l.	1
		In bulk in barrels, l. c. l.	2

Protest is made that No. 51 names a first-class rating on turpentine in glass or earthenware, or in metal cans in barrels, which is alleged to be advanced from second class.

The carriers contend that the movement is always in these containers packed in boxes, and that on this package there has been no advance. It is stated that the barrel rating covers the bulk movement.

There has been no advance in boxes; and as to the rating in glass or cans in barrels there is some doubt whether there is any advance. The movement of the refined turpentine appears to be principally in glass containers in boxes, which is a justification for putting the barrel rating on the same basis as is done generally throughout the classification.

The carriers will be expected to revise the rating in No. 51, on turpentine in metal cans in barrels, l. c. l., in conformity with views we have already expressed with regard to ratings on the safer and more secure package, and provide a rating not higher than that in bulk in barrels.

VALVE CUPS, LEATHER.

No. 50, page 123, item 30.		No. 51, page 292, item 18.	
Valve cups, in boxes or bundles, leather	2	Valve cups, leather, in boxes	1

Carriers justify the proposed advance upon the ground that leather washers are first class, and that the value of the leather valve cup is three or four times that of the leather from which it is made and which takes second-class rates. The change will not be disapproved.

HORSE-RADISH ROOTS.

No. 50, page 178, item 62.	No. 51, page 293, item 3.
Vegetables.—Horse-radish roots, p. p.—C. 1., min. wt. 24,000 lbs... C	Vegetables, fresh or green— Horse-radish roots, in packages named, c. 1., min. wt. 24,000 lbs... 5

Carriers justify the advance upon value, it being stated that wholesalers quote a price of $7\frac{1}{2}$ cents per pound in bags and $6\frac{1}{2}$ cents in barrels. It is contended that this value is in excess of the value of other vegetables upon which carriers apply class C rating, such as potatoes, turnips, beets, etc.

Provisionally this change may stand.

TOMATOES.

No. 50, page 179, item 8.	No. 51, page 293, item 7.
Vegetables.—Tomatoes, c. 1., min. wt. 24,000 lbs C	Vegetables, fresh or green.—To- matoes, prepaid, in packages named, c. 1., min. wt. 20,000 lbs... 5

This change should go with the preceding.

TURNIPS WITH TOPS.

No. 50, page 179, item 11.	No. 51, page 292, item 29.
Vegetables.—Turnips, in bulk, min. wt. 24,000 lbs C	Vegetables, fresh or green.—Tur- nips with tops, in packages named, min. wt. 20,000 lbs..... 5

Along with certain other vegetables with tops, turnips with tops have been advanced from class C to fifth class. Carriers state that they have divided the fresh summer vegetables from the winter vegetables, the former being more perishable in their nature and requiring greater expedition of service. In advancing the rating, the minimum was reduced from 24,000 to 20,000 pounds, apparently because turnips with tops do not load as heavily as without tops. This change may stand.

WASHERS.

No. 50, page 36, item 8.	No. 51, page 308, items 3 and 7.
Brass articles.—Washers, in boxes, barrels, or kegs 2	Washers or gaskets, copper, brass, or bronze, not plated: In barrels or boxes 2 Nickel-plated, in barrels or boxes 1

No reason suggests itself why nickel-plated washers should take higher ratings than washers not nickel plated, the plating adding but little, if anything, to their value.

WOOLEN YARN WASTE.

No. 50, page 162, item 24.	No. 51, page 309, item 3.
Shoddy, shoddy dust, shear flocks, rope dust, woolen-mill sweepings and yarn waste:	Yarn waste, woolen:
In sacks, l. c. l.----- 2	In bags, l. c. l.----- 1
In bales, l. c. l.----- 3	In barrels or boxes, l. c. l.----- 2
In sacks or bales, c. l., min. wt. 30,000 lbs.----- C	In machine-pressed bales, l. c. l.----- 3
	In packages named, straight or mixed c. l., min. wt. 24,000 lbs. subject to rule 6-B.----- 4

In bags the rating on this commodity in less than carloads is proposed to be advanced from second to first class. The carload rating is advanced from class C to fourth class, with a reduction in the minimum from 30,000 to 24,000 pounds, made subject to rule 6-B. The mixture with flocks has also been eliminated.

This article is used in the manufacture of cheaper woolen goods; and while a low-grade commodity, it is of a higher grade than mill sweepings. The change may be made.

INSECTICIDES, AGRICULTURAL.

No. 50, page 58, item 19.	C. L.	No. 51, page 173, item 3.	C. L.
Disinfectant, n. o. s., dry; in barrels; in tins, boxed; in glass. boxed; or in paper packages, boxed, c. l., min. wt. 30,000 lbs.-----	5	Insecticides or fungicides, agricultural, not otherwise indexed by name, other than liquid; in fiber or metal cans or cartons in barrels or boxes, or in bulk in barrels or boxes, straight or mixed c. l., min. wt. 30,000 lbs.-----	4
		No. 51, page 130, item 29.	
		Disinfectants, other than medicinal, not otherwise indexed by name, other than liquid, in glass or earthenware, packed in barrels or boxes, in pails, in fiber or metal cans or cartons in barrels or boxes, or in bulk in barrels or boxes; c. l. min. wt. 30,000 lbs.-----	5

No. 51 provides a carload rating of fourth class on insecticides other than liquid, and it is claimed by protestants that this rating is an advance from fifth class. There is no item in No. 50 which

is a counterpart of the above item. The rating referred to by protestants was probably that for dry disinfectants.

Dry disinfectants are provided for, under No. 51, at the same rating and a lower minimum than was applied in No. 50. If the article in question is a disinfectant, it can move at this rating under No. 51.

PACKING REQUIREMENTS ON GASOLINE ENGINES.

No. 50, page 114, item 31.

L. C. L., C. L.

Machinery and machines.—Engines, gas and gasoline, n. o. s., including portable gasoline engines, boxed or crated, or with light and easily breakable and detachable parts removed and boxed or, if attached, protected by crating, min. wt. 24,000 lbs ----- 1 A

No. 51, page 201, item 19.

L. C. L., C. L.

Machines and machinery.—Engines, gas or gasoline, not otherwise indexed by name, and portable gasoline engines:
In boxes or crates, or with light and easily breakable parts removed and in boxes or, if not removed, protected by crating----- 1
In packages named, straight or mixed c. l., min. wt. 24,000 lbs., subject to rule 6-B and note 3----- A

The packing requirements on gasoline engines, as provided in item 19, page 201, of No. 51, have been complained of. There has been no change from the packing requirements of No. 50.

No. 50, page 25, item 50.

Agricultural Implements, Except hand.

Norm 2.—Gasoline engines, packed as required under machinery, farm wagons, farm trucks, sprayers (except hand), clover hullers, power corn huskers and ensilage cutters, corn crushers, power corn shellers, separators or threshers (with or without power), may be shipped in mixed c. l. with "agricultural implements (except hand)" at class A, min. wt. 24,000 lbs.

No. 51, page 77, item 11.

C. L.

Agricultural implements, other than hand, taking class A, min. wt. 24,000 lbs. in packages or loose as provided for straight carload shipments, and gasoline engines packed as required for l. c. l. shipments, farm trucks or wagons, sprayers (except hand), clover hullers, power corn huskers and fodder shredders, power ensilage cutters, corn crushers, power corn shellers, separators or threshers, with or without power, mixed c. l., min. wt. 24,000 lbs., subject to rule 6-B. A

Item 11, page 77, of No. 51 was complained of with regard to the provision which requires gasoline engines to be "packed as required for l. c. l. shipments." There is no change in this respect from No. 50.

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WOODEN Egg CARRIERS, s. u., EACH CONTAINING ITS EQUIPMENT OF FILLERS.

No. 50, page 60, item 6.	No. 51, page 133, item 31.	I. C. L. C. L.
Egg-box stuff, egg-case fillers and egg cases (boxes) (wooden), min. wt. 12,000 lbs. (subject to rule 6-B) c. 1.....	Egg cases or carriers, wooden, s. u. empty, or each containing not to exceed its equipment of fillers.....	1
3		

No. 50 provided a c. l. rating of third class, minimum weight 12,000 pounds, subject to rule 6-B. No. 51 provides a less-than-carload rating of first class, but eliminates the carload rating. The carload rating and minimum should be restored.

TIN CANS.

No. 51, page 109, items 9 to 15, inclusive.

No. 51, pages 285 and 286.

Complaint was made that the placing of the letters "n. o. i. b. n." after various articles on the pages above indicated has resulted in breaking a mixture hitherto permitted; that, under No. 51, cans to be used for the purpose of canning fruits and vegetables can not be shipped in a carload mixture.

Item 15, page 109, of No. 51 provides for mixture of "tin fruit cans" with "tin cans n. o. i. b. n." As tin vegetable cans are not otherwise indexed by name, there is no apparent reason why they can not be shipped in mixed carload lots.

ALUMINUM COOKING UTENSILS.

No. 50, page 28, item 47.	No. 51, page 33, item 13.
Aluminum cooking utensils, n. o. s., boxed.....	Aluminum and aluminum articles, baking dishes, basins, boilers, bowls, broilers, buckets, cake molds, cake-mold covers, dippers, funnels, griddles, kettles, kitchen cups, ladles, measures, muffin pans, palls, pans, pan covers, pie plates, poachers, pots not percolators, pot covers, pudding molds, roasters, serving trays, shakers, skillets, strainers, tea steepers, or waffle molds:
1	Not nested, in barrels or boxes, l. c. 1..... 1½ Nested, in barrels or boxes, l. c. 1..... 1

No. 51 advances the rating on aluminum cooking utensils, not nested, l. c. 1., from first to 1½ times first class, No. 50 having provided for them at first class, l. c. 1., boxed, either nested or not nested.

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On account of the greater space required and the light weight of packages, the change may become effective.

CIDER.

No. 50, page 105, item 1.		No. 51, page 117, item 20.	
Liquors and liquids.—Cider in bottles, packed.....	4	Cider, in glass or earthenware, packed in barrels or boxes, l. c. l.....	8

No. 51 advances the rating on cider in glass or earthenware, l. c. l., from fourth to third class. After investigation one protestant withdrew his complaint.

It appears that the high-grade, expensive cider is packed in glass or earthenware. The change will be allowed to go into effect.

CIDER SIRUP (BOILED CIDER).

No. 50, page 104, item 32; page 105, item 1.		No. 51, page 117, item 22.	
	L. C. L. C. L.		L. C. L. C. L.
Cider, n. o. s., including cider syrup:		Cider sirup (boiled cider):	
In wood, min. c. l. wt. 30,000 lbs.....	4 5	In glass or earthenware, packed in barrels or boxes, l. c. l.....	2
In bottles, packed, min. wt. c. l., 30,000 lbs.....	4 5	In metal cans, in barrels or boxes, l. c. l.....	2
		In bulk, in barrels, l. c. l.	3
		In packages named, c. l., min. wt. 36,000 lbs.....	5

No. 51 advances the rating on boiled cider, l. c. l., in bulk in barrels from fourth to third class, in metal cans in barrels or boxes from fourth to second class, and in glass or earthenware packed in barrels from fourth to second class. Cider sirup in metal cans packed in boxes or barrels provides a safer and more secure shipment than when in bulk in barrels and should not take a higher rating. With this exception, changes may go into effect.

OTHER CHANGES.

Changes in the ratings effected by No. 51 on the following articles were protested, but the carriers, as indicated in their brief, have agreed to restore the ratings published in No. 50: Coffee substitutes; juniper and sloe berries; glucose jelly in kits; mailing boards; silos, wooden.

The carriers agreed to suspend the operation of packing requirements on alcoholic liquors until further investigation is made with reference thereto.

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FRUIT JELLY.

No. 50, page 151, items 42 to 49, inc.

Preserves, n. o. s., crushed fruit, fruit butter, and jelly:	
In tin cans, boxed.....	4
In barrels, kits, or kegs.....	4
In buckets or pails, boxed.....	4
In stone jars or glass, packed in barrels or boxes.....	4
In buckets, pails, or tubs.....	1
In paper boxes or paper pails, boxed.....	8

No. 51, page 149, item 2.

Fruit, other than dried, evaporated or fresh.—Canned or preserved (in juice or sirup, or in liquid other than brine or alcoholic liquor), fruit butter, crushed fruit, fruit jam, fruit jelly, or fruit pulp:	
In earthenware packed in crates, l. c. l.....	3
In glass or earthenware, packed in barrels or boxes, l. c. l.....	4
In pails or tubs, l. c. l.....	2
In pails or tubs, in crates, l. c. l.....	4
In metal cans in crates, l. c. l.....	3
In bulk in barrels, l. c. l.....	4
In metal cans in barrels or boxes, l. c. l.....	4

Complaint is made that in No. 51 jelly in pails, l. c. l., is rated at second class, while under No. 50 jelly in kits was rated at fourth class. No. 50 provided a rating of first class on jelly in pails; therefore, the rating in No. 51 is a reduction and should be allowed to stand. However, there is no rating in No. 51 on jelly in kits, and we are of the opinion that it should be rated the same as jelly in pails.

GRADERS OR LEVELERS, DRAG—WOOD AND IRON OR STEEL COMBINED.

No. 50, page 161, items 17 to 22, inc.

Scrapers, land-grading machines, n. o. s.:	
S. u.....	1½
K. d.....	8
Two-wheeled scrapers, wheels on.....	1½
Two-wheeled scrapers, wheels off.....	8

No. 51, page 163, items 15 and 16.

Grading and road-making implements:	
Graders or levelers, drag, iron or steel, in packages or loose, l. c. l.....	1
Wood and iron or steel, combined:	
S. u., in packages or loose, l. c. l.....	1
K. d., in boxes, bundles, or crates, l. c. l.....	3

Protest alleges that items 15 and 16, page 163, of No. 51 should read, "In boxes or loose, wheels on or off, on flat cars, * * * third class, l. c. l."

There is no material change in No. 51 and, therefore, the Commission expresses no opinion.

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COTTONSEED HULLERS.

No. 50, page 118, item 37.	No. 51, page 207, item 8.
Machinery and machines.—Cottonseed hullers..... 2	Machinery and machines, oil mill.—Seed hullers: S. u., loose or in skids, l. c. l. 1 S. u., in boxes or crates, l. c. l. 1 K. d., in boxes, bundles, or crates, l. c. l. 2

Under No. 50 the second-class rating on cottonseed hullers applied, regardless of the manner in which shipped. No. 51 carries the second-class rating on hullers, k. d., in boxes, bundles, or crates, and advances the rating on the set-up article to first class, loose or on skids or in boxes or crates. This change is in line with ratings on the majority of the articles in the machinery and machine lists, and will be allowed to stand.

OIL-CAKE PRESSES.

No. 50, page 111, items 45 to 48 inc.	No. 51, page 207, item 3.
Machinery and machines.—Machinery, n. o. s.: Completely k. d. and boxed... 2 In frame or set up..... 1½ K. d., in pieces..... 1	Machinery and machines.—Oil-cake presses, k. d., in boxes, bundles, or crates, l. c. l. 2

There was no specific item in No. 50 covering this article, and in consequence it had to move under the machinery, n. o. s., rating. Objection is made to the packing requirements, which it is claimed are unnecessary. The packing requirements are the same as apply on machinery, n. o. i. b. n., in No. 51, and will be allowed to stand.

SEED COOKERS OR HEATERS.

No. 50, page 111, items 45 to 48, inc.	No. 51, page 207, item 5.
Machinery and machines.—Machinery, n. o. s.: Completely k. d., and boxed... 2 In frame or set up..... 1½ K. d., in pieces..... 1	Machinery and machines.—Seed cookers or heaters, k. d. in boxes, barrels, or crates, l. c. l. 2

There was no specific item in No. 50 covering this article, and, in consequence, it had to move under the machinery, n. o. s., rating. Objection is made to the packing requirements, which are claimed to be unnecessary. The packing requirements are the same as apply on machinery, n. o. i. b. n., in No. 51, and will be allowed to stand.

LININGS, BAG AND BARREL.

No. 50, page 148, item 18.	No. 51, page 238, item 22.
Paper articles.—Bag and barrel linings (crinkled paper), in bales, compressed..... 2	Paper articles.—Linings, bag, barrel, or box, crinkled paper, in bales, boxes, bundles, or crates, l. c. l..... 1

Complaint is against the advance on l. c. l. shipments from second to first class. No testimony was introduced to show that the advance would work a hardship. The rating is in line with that provided in the official classification. The change may become effective.

PLUMBERS' GOODS—SINKS, NESTED.

Protest was made that, under rule 10 of No. 51, dealers will be required to nest three sinks in order to obtain the rating provided in item 15, page 247 of No. 51. Rule 10 has been disapproved, which removes the cause for this complaint.

PUMPS.

No. 50, page 152, item 36.	No. 51, page 254, item 4.
Iron pumps (hand or windmill)..... 3	Pumps, cast iron or steel, not otherwise indexed by name: S. u., loose, l. c. l..... 1 K. d., wired in bundles, l. c. l. 3 In barrels, boxes, or crates, l. c. l..... 3

No. 51 advances pumps, s. u., loose, from third to first class. On account of the insecurity of the package the change may become effective.

SEEDS IN CABINETS.

No. 50, page 161, item 53.	No. 51, page 268, item 2.
Seeds, flower, garden, and tree, n. o. s., in boxes, barrels, or sacks..... 3	Flower or garden seeds not otherwise indexed by name, in bags, barrels, boxes, or seed cabinets in boxes, l. c. l..... 3

Protest is against the requirement for boxing the seed cabinets. No. 50 made no provision for shipping seeds in seed cabinets. This is a new provision. It may become effective.

HEMPSEED, L. C. L.

No. 50, page 161, item 52.	No. 51, page 267, item 15.
Seeds.—Flaxseed screenings, and hempseed, in barrels or sacks... 4	Seeds, hemp, in bags, barrels, or boxes, l. c. l..... 3

Protest is against advance in rating on hempseed from fourth to third class. In No. 50 hempseed was rated the same as flaxseed and
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flaxseed screenings, fourth class. No. 51 maintains the fourth-class rating on flaxseed and flaxseed screenings.

The carriers offer no justification for the change, and it will be denied.

CORIANDER SEED, L. C. L.

No. 50, page 161, item 45.

Seeds, coriander, in barrels or
sacks..... 2

No. 51, page 267, item 24.

Seeds, coriander, in bags, barrels, or boxes, l. c. l..... 1

The carriers offer no justification for the advance in the rating on this commodity from second to first class. It will be denied.

SODA, ARSENATE OF, L. C. L.

No. 50, page 49, item 19.

Soda, arsenate of, in boxes, barrels, or casks..... 3

No. 51, page 271, item 4.

Sodium (soda), arsenate of:
In glass or earthenware
packed in barrels or boxes..... 1
In fiber or metal cans or cartons in boxes or barrels,
l. c. l..... 1
In bulk in barrels, l. c. l..... 3

Applying the principle heretofore announced with reference to packing requirements, arsenate of soda in fiber or metal cans or cartons in boxes or barrels should not take a higher rating than when shipped in bulk in barrels.

On the theory that the article when packed in glass or earthenware in boxes or barrels is the chemically pure commodity and of a higher value, the change will be permitted to go into effect.

SODA, BISULPHATE OF.

No. 50, page 49, item 22.

Chemicals and drugs.—Soda, bisulphate of, in barrels..... 4

No. 51, page 271, item 7.

Sodium (soda), bisulphate of:
Liquid—
In glass or earthenware,
packed in barrels or
boxes..... 1
In bulk in barrels, l. c. l..... 4
Other than liquid—
In glass or earthenware,
packed in barrels or
boxes..... 1
In fiber or metal cans or cartons in barrels or
boxes..... 1
In bulk in barrels or
boxes, l. c. l..... 4

No. 51 advances the rating on bisulphate of soda from fourth to first class when in glass or earthenware packed in barrels or boxes and when in fiber or metal cans or cartons packed in barrels or boxes. As fourth-class rating is provided for shipments in bulk in barrels,
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we find that shipments in fiber or metal cans packed in boxes or barrels should not take a higher rating. Shipments in glass or earthenware packed in barrels or boxes may be rated at first class.

PINE TAR.

No. 50, page 146; items 14 to 20, inc.

	L. C. L.	C. L.
Paving and roofing materials:		
Tar, in tank cars (see rule 22), 9.5 lbs. per gal. (exception to rule 1)-----		D
Tar n. o. s. (not petroleum residuum) and cable coating:		
In buckets or pails-----	2	
In barrels or boxes-----	4	
In cans packed in barrels---	4	D (min. wt. 40,000 lbs.
In tin cans packed in barrels with canvas heads-----	2	
In cans-----	2	

No. 51, page 283.

	L. C. L.	C. L.
Tar, pine:		
In glass or earthenware, packed in barrels or boxes, l. c. l.-----		2
In metal cans in barrels or boxes, l. c. l.-----		3
In bulk in barrels, l. c. l.-----		4
In packages named, c. l., min. wt. 30,000 lbs.-----		5
In tank cars, c. l. wts., per gal. 8.75 lbs., subject to rule 32-----		5

No. 51, page 283, item 16.

Tar not otherwise indexed by name, and cable coating:		
In buckets or pails, l. c. l.-----		2
In barrels or boxes, l. c. l.-----		4
In cans in barrels or boxes, l. c. l.-----		4
In metal cans in barrels with canvas heads, l. c. l.-----		2
In cans, loose, l. c. l.-----		2
In packages named, straight or mixed, c. l., min. wt. 40,000 lbs.-----		D

Item 15, page 283 of No. 51, is a new item. Pine tar was not distinguished in No. 50 from the cheaper product coal tar. The change will be allowed to become effective, except that shipments packed in metal cans should not take a higher rating than when in bulk in barrels.

VEGETABLES, DRIED OR EVAPORATED.

No. 50, page 179, item 66.

Vegetables, dried, n. o. s. or desiccated, in cans or boxes-----	4
--	---

No. 51, page 294, item 4.

Vegetables, dried or evaporated, not otherwise indexed by name:	
In glass or earthenware, packed in barrels or boxes, l. c. l.-----	3
In bags, l. c. l.-----	2
In bulk in barrels or boxes, or in fiber or metal cans, in barrels or boxes, l. c. l.-----	3

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Protest is made against the advance from fourth to third class, in bulk, in barrels or boxes or in fiber or metal cans in barrels or boxes, l. c. l. The carriers sought to justify the advance on the ground of the value and light weight of this commodity as compared with canned vegetables, which take fourth-class rate, and on the ground that in effecting this advance dried vegetables are placed on the same basis with dried fruit. The change may become effective.

PACKING REQUIREMENTS ON WASHBOARDS.

No. 50, page 161, item 3.

Woodenware and wooden fiber ware.—Boards, wash, in bundles, securely cleated..... 2

No. 51, page 302, item 20.

Washboards, in boxes or crates, or in bundles of 6 or more cleated with 2 or more wooden strips on each edge or side and nailed to each washboard, l. c. l..... 2

No. 50 provided a rating of class 2 on washboards "securely cleated." No. 51 provides the same rating, but is more explicit in packing requirement, namely, "cleated with two or more wooden strips on each edge or side and nailed to each washboard." This requirement seems reasonable and may go into effect.

MIXTURE OF PEAS AND BEANS.

Under No. 50 dried peas and dried beans were allowed to move in mixed carload lots at fifth class, minimum weight 36,000 pounds, while No. 51 eliminates the mixture and applies fifth-class rating, minimum carload weight 36,000 pounds, on each. The mixture should be restored.

SUGAR OR SIRUP EVAPORATORS.

No. 50, page 27, item 17.

	C. L.	L. C. L.
Agricultural implement parts.—Evaporator pans, galvanized steel and copper (for sugar evaporators), crated..	2	A, min. wt. 24,000 lbs.

No. 50, page 28, note 3.

Agricultural implement parts (except brown corn dump) taking class A, min. wt. 24,000 lbs., in carloads, may be shipped in mixed c. l. with "agricultural implements except hand" at class A, min. wt. 24,000 lbs.

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No. 51, page 281, items 3 to 7, inc.

Sugar or sirup evaporator furnaces and open-top pans.—Pans: Copper or copper lined—Tops and bottoms protected by wooden strips not less than $\frac{1}{2}$ by 3 inches, not more than 4 inches apart, loose, l. c. l..... 1½

In boxes or crates, l. c. l. 2

In packages named, straight or mixed c. l., min. wt. 15,000 lbs., subject to rule 6-B..... 3

Sugar or sirup evaporator furnaces and open-top pans.—
Pans—Continued.

Iron, steel, or tin, sheet—

Bottoms protected by wooden strips not less than $\frac{3}{4}$ by 8 inches, not more than 4 inches apart, loose, l. c. l.----- 1
In boxes or crates, l. c. l. 2
In packages or loose, straight or mixed c. l., min. wt. 15,000 lbs., subject to rule 6-B----- 3

Sugar or sirup evaporator pans, open top, and sugar or sirup evaporator furnaces will be taken in mixed c. l., with cast-iron or steel cane mills, in packages or loose, as provided for straight c. l. shipments at the highest c. l. rating for any article in the shipment, min. wt. 24,000 lbs., subject to rule 6-B.

There is no advance in No. 51 on pans, crated, l. c. l., and the ratings on the article loose are new. On straight c. l. the rating has been advanced from class A to third class, but the minimum has been reduced from 24,000 pounds to 15,000 pounds, subject to rule 6-B. This change will be allowed to go into effect.

No. 50 allows the mixture of evaporating pans with agricultural implement parts and with agricultural implements, except hand (including cane mills), at class A, minimum weight 24,000 pounds. No. 51 provides for a mixture of evaporating pans with cane mills and sugar or sirup evaporator furnaces in c. l. shipments, third class, minimum weight 24,000 pounds, subject to rule 6-B.

The new mixture in No. 51 is approved. Class A rating should, however, be applied.

NURSERY AND FLORISTS' STOCK, OTHER THAN CUT DECORATIVE EVERGREENS.

No. 50, p. 130, items 53 to 56; p. 181, items 4 to 9 and 15 to 20.

Nursery stock, p. p. or guaranteed, min. wt. on all c. l. shipments n. o. s., as follows: Length of car 36 ft. 6 in. or less, weight 16,000 lbs.; length of car over 36 ft. 6 in. and not over 45 ft. 6

No. 51, p. 222, items 1, 2, 7, 8, 12, 13, 15, and 16.

Nursery and florists' stock, other than cut and decorative evergreens, prepaid, c. l. min. wts., unless specified in individual items, as follows: Length of car 36 ft. 6 in. or less, weight 16,000

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in., weight 20,000 lbs., length of car over 45 ft. 6 in., weight 24,000 lbs.:

Orange and lemon trees, charges prepaid or guaranteed at carriers' option; boxed, when same can be loaded in box or stock cars; boxed, when too large to be loaded in box or stock cars; in bales, completely wrapped, each weighing 100 lbs. or over; in bales, each weighing less than 100 lbs.; in bundles, roots wrapped, each bundle weighing 100 lbs. or over, c. l.----- A

Trees, dormant cuttings, seedlings, scions, and shrubbery, n. o. s., boxed, when same can be loaded in box or stock cars; boxed, when too large to be loaded in box or stock cars; in bales or in bundles with roots wrapped, actual weight consignments not less than 100 lbs. each, c. l.----- B

Trees, in bundles, bottoms boxed, tops wrapped in straw, each weighing 100 lbs. or over, loaded in box or stock cars, c. l.----- B

Trees, n. o. s., in bulk----- B

lbs.; length of car over 36 ft. 6 in. and not over 45 ft. 6 in., weight 20,000 lbs.; length of car over 45 ft. 6 in., weight 24,000 lbs.:

Dormant, citrus.—Cuttings, scions, or seedlings, in barrels or boxes, or trees, in packages or loose, straight or mixed, c. l.----- A

Dormant, other than citrus, and other than cranberry vines or strawberry plants.—Cuttings, scions, or seedlings, in barrels or boxes; plants, shrubs, trees, or vines, in packages or loose, straight or mixed, c. l.----- B

Not dormant, shrubs—in bundles, roots boxed or wrapped; rooted in tubs or boxes without covers, tops protected----- A

Not dormant, trees—in bundles, roots boxed or wrapped; rooted in tubs or boxes without covers, tops protected----- A

Protest was made, first, against the advance in No. 51 in carload rate from class B to class A on dormant citrus cuttings, scions, etc.; second, against the same advance on shrubs not dormant; and third, against the supposed advance on trees not dormant in packages not named from class B to class A, c. l.

The nursery stock list has been rewritten in No. 51, and as it now reads is more scientific and clear.

Orange and lemon trees were rated at class A in No. 50 the same as in No. 51, and no good reason appears why there should be a lower rate on the citrus cuttings, etc., than on the trees.

It seems that shrubs not dormant should properly take a higher rating than when dormant, on account of the greater likelihood of damage.

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There is no rating in No. 51 on trees not dormant, except in packages, and we think the carriers are entitled to have articles which are liable to damage offered them in a package which will afford adequate protection.

Protests of complainants were limited to the mere statement of the change, and no evidence was introduced to show the new ratings worked a hardship.

The above items will be allowed to stand as they appear in No. 51.

CRANBERRY VINES.

No. 50, page 130, items 53 to 56, and
page 131, items 1 to 3.

Nursery stock, p. p. or guaranteed, min. wt. on all carload shipments n. o. s., as follows: Length of car, 36 ft. 6 in. or less, weight 16,000 lbs.; over 36 ft. 6 in. and not over 45 ft. 6 in., weight 20,000 lbs.; over 45 ft. 6 in., weight 24,000 lbs.

Cranberry vines:

Boxed.....	2	C. L.
In bales, l. c. l.....	3	
In bales, c. l.....		B

No. 51, page 222, item 18.

Nursery and florists' stock:

Cranberry vines—

In bags, l. c. l.....	1
In crates, l. c. l.....	1
In barrels or boxes, l. c. l.....	2
In bales, l. c. l.....	3
In packages named, c. l., min. wt., 24,000 lbs., sub- ject to rule 6-B.....	B

Protest was against advance in minimum weight and the application of rule 6-B.

The only carload rating provided in No. 50 on cranberry vines was applied when they were shipped in bales. Under No. 51 the carload rating applies on any or all packages on which a less-than-carload rating is provided. The advance in No. 51 on cranberry vines in bales loaded on a 36-foot car is 33½ per cent. There is nothing in the record to show the amount of cranberry vines which can be reasonably loaded. Tentatively the change should be allowed to go into effect.

Many changes in No. 51 were not specifically protested, nor was any mention made of them in any of the communications, formal or informal, received by the Commission. Extensive tabulations embracing this class of changes lie before us. We see no necessity for publishing these tables at this time and will pass them by for the present with the suggestion that carriers should dispose of all unprotested items in the light of the principles and suggestions announced in this report.

In conclusion we desire to bring together some of the more important suggestions resulting from the present investigation that are discussed in this report.

(1) *Minimum weights.*—In establishing the minimum weight for a commodity, the test of the physical ability to load a certain weight into a car of given size is not sufficient. If it is in the interest of efficient and economical railway operation to increase the size of cars used, such rate of increase should not exceed the ability of business to adapt itself to the larger cars. The minimum weight for shipments of heavy, low-grade commodities that move in great volume is not calculated to disturb commercial conditions to the same extent that they might be disturbed by a correspondingly high minimum of traffic of a different character. Generally speaking freight cars should be made to fit the business. Within reasonable limits business may be required to adapt itself to the car, but when there is a conflict between the increased size of the car and the necessities of business, business may not be required unreasonably to adapt itself to the car. Statistics for the United States, as well as for leading countries of Europe, show that increases in the size of cars have been accompanied by less economical utilization of car space. The minimum weights prescribed in the three great classifications in the United States have been based quite uniformly upon commercial conditions rather than physical dimensions. The commercial minimum is a real thing, and established methods and customs governing business at any particular time should be given proper weight in the establishment of minimum weights at that time.

(2) *A graduate scale of minimum weights.*—In the present proceeding the discussion bearing upon a graduate scale has centered about rule 6-B. The principle of this rule is correct. It promotes economical use of car space and has a tendency to check the careless shipper. A universal graduate scale probably can not be adopted. The loading possibilities of different commodities vary so widely in their relation to differing car dimensions that it may be necessary to adopt different scales for different classes of commodities. The so-called "two-for-one" rule should be incorporated in the classification rather than be left to the commodity tariffs or exception sheets of the individual carriers, as it has been heretofore.

(3) *Carload mixtures.*—The testimony shows that No. 51 was shaped with a view of eliminating and restricting mixtures. We think that the liberalization of mixtures is in the interest of the whole public. Artificial restrictions upon mixtures are restrictions upon the freedom of trade and commerce, with a tendency to militate against the small man. From the point of view of railway operation, mixtures result in a better utilization of car space, they lessen the demands upon terminal properties, they decrease the expense of operation and facilitate the movement of freight.

(4) *Carload ratings.*—Carload ratings should be established whenever carload quantities are offered for shipment and public interest requires it. The relative merits of a system of carload and less-than-carload ratings as compared with any-quantity ratings are not discussed.

(5) *Relation between carload and less-than-carload ratings.*—This proceeding reveals considerable diversity in the spread between carload and less-than-carload ratings. In establishing a proper relation between the carload and less-than-carload ratings, among the factors to which consideration should be given are the relative cost of handling, the demands made upon terminal properties of the carriers, and the utilization of equipment.

(6) *Packing requirements.*—The propriety of increasing the rating upon an article when it is offered loose or in bundles with practically no protection as compared with the rating of the same commodity when boxed or otherwise fully protected, can not be questioned. A package which is less desirable from a transportation standpoint deserves to be given a higher rating than one which is more desirable. The approval of this rule, however, does not sanction disproportionate and arbitrary increases in the rating of an article when offered in a less desirable package. There should be some relation between the increased rating and the increase in the risk, difficulty of handling, and other proper considerations.

(7) *Declared and invoice values.*—Our views upon this subject have been expressed in *The Matter of Released Rates*, 13 I. C. C., 550; *Delle Paper & Pulp Co. v. C. & N. W. Ry. Co.*, 20 I. C. C., 419; and *Shaffer & Co. v. C. R. I. & P. Ry. Co.*, 21 I. C. C., 8. We are advised that this matter is now under consideration by the Supreme Court of the United States, and therefore refrain from expressing any further opinion.

(8) *Procedure in the future.*—The formal hearings of classification committees hereafter should be made public, after due notice to the interested parties, including state commissions and the Interstate Commerce Commission. A record of the facts and arguments for and against a certain classification should be kept. As rapidly as items, or groups of items, have been disposed of by the classification committee they should be published in accordance with law. In case of a protest to this Commission, the record made up before the committee should be promptly transmitted to the Commission. On the basis of this record, supplemented when necessary by additional inquiries, the Commission will be able to decide whether or not to suspend a proposed change in the classification. We believe that this manner of procedure will obviate nearly all formal proceedings in the future and will confine investigations on the part of this Com-

mission to the relatively few and large matters decisive of principles and possibly also affecting great material interests.

While in this report there are suggestions and conclusions which probably would be equally applicable to classifications other than the one under consideration, in the territories to which they apply, these suggestions and conclusions are specifically applicable only to the classification herein considered and the territory in which it applies, since the others are not before us in this proceeding.

It is expected that carriers will revise No. 51 and direct the future development of classification in accordance with the views expressed in this report.

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INVESTIGATION AND SUSPENSION DOCKET No. 155.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF SALT FROM KANSAS POINTS TO STATIONS LOCATED ON THE WICHITA FALLS & NORTHWESTERN RAILWAY IN THE STATE OF OKLAHOMA.

Submitted November 30, 1912. Decided December 10, 1912.

Interested lines should cancel the tariffs under suspension and maintain the rates now in effect.

J. E. Love, of the Oklahoma Corporation Commission, for protestants.

F. G. Wright and *H. G. Herbel* for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Chairman:

The tariffs under suspension are supplement No. 11, I. C. C. No. A-1087, of the Missouri Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company; and supplement No. 9 to I. C. C. No. 6050, of the St. Louis & San Francisco Railroad Company. The effect of these supplements is to cancel joint rates on salt from the salt fields of Kansas to points in Oklahoma on the Wichita Falls & Northwestern Railway, thereby advancing rates, when shipped by these routes, from 5 cents to 10 cents per 100 pounds.

The proceeding was assigned for hearing in Washington. When the case was called no one appeared for the St. Louis & San Francisco Railroad Company. The Missouri Pacific and the St. Louis, Iron Mountain & Southern companies appeared by counsel, who stated that they did not desire to introduce any evidence in justification of the tariffs in question.

Since the carriers have failed to justify the proposed advances, the Commission is of the opinion that such advances are unjust and unreasonable, that the present through routes should be maintained, that the present joint rates are and will be just and reasonable maximum rates for the future, and that interested lines should cancel the tariffs under suspension and maintain the rates now in effect, and it will be so ordered.

No. 4417.
SWITZER LUMBER COMPANY
v.
KANSAS CITY SOUTHERN RAILWAY COMPANY.

Submitted December 11, 1911. Decided December 9, 1912.

Rate of 18 cents per 100 pounds for the transportation of lumber in carloads from Stables, La., to Ashdown, Ark., found to have been unreasonable to the extent that it exceeded 10 cents. Reparation awarded.

Walter H. Saunders for complainant.

F. W. and F. H. Moore for defendant.

REPORT OF THE COMMISSION.

By THE COMMISSION:

Complainant is a corporation engaged in the lumber business, having its principal office at St. Louis, Mo. By petition, filed September 18, 1911, it alleges that on various dates between September 8, 1909, and February 2, 1910, it shipped eight carloads of lumber from Stables, La., consigned to the St. Louis & San Francisco Railroad Company, Fort Smith, Ark., routed via the line of said consignee at Ashdown, Ark., for the transportation of which defendant collected charges to Ashdown, at its local rate of 18 cents per 100 pounds, which rate is alleged to have been unreasonable to the extent that it exceeded $7\frac{1}{2}$ cents per 100 pounds. Reparation is asked.

It is evident that the claim for reparation on the shipment of September 3, 1909, is barred by the statute of limitation. On the seven other shipments weighing in the aggregate 422,400 pounds, charges amounted to \$753.92. We note that there was an undercharge of \$6.41 on the shipment of October 30, 1909.

The distance from Stables to Ashdown is 202 miles, and defendant's commodity mileage tariff applicable between all stations on its line provided a rate of 18 cents on lumber for the above distance. It appears that a rate of 18 cents also applied from a large producing territory in Louisiana and Texas to points on defendant's line as far north as Fort Smith, and that Stables is the most northerly of the points of origin and Ashdown the most southerly of the points of destination, to which an 18-cent rate applied. Contemporaneously with the movement of these shipments defendant maintained a scale

of distance rates as follows, applicable on lumber between stations on its line south of and including Page, Okla.:

<i>Distances, with rate per 100 pounds.</i>		<i>Cents.</i>
80 miles and less.....	-----	5
85 miles and over 80 miles.....	-----	6
90 miles and over 85 miles.....	-----	7
200 miles and over 90 miles.....	-----	7½

However, by the terms of the tariff this scale was not applicable to Ashdown and other junction points, on traffic destined to points on other lines, and did not provide rates for distances over 200 miles. Complainant contends that the 18-cent rate from Stables to Ashdown was unreasonable mainly because the haul was only 2 miles greater than the distance over the same line, and in the same direction, to which the 7½-cent rate applied.

Defendant states that the distance scale in which the 7½-cent rate is found was established for the purpose of permitting the free movement of lumber between local stations in the lumbering districts for consumption at such points. Defendant also states that these distance rates are unusually low, and that it is unable to increase them on account of the opposition of the state commissions, most of the movements being intrastate. It is noted, however, that the scale is applied on interstate traffic, and is extended to points as far north as Page, Okla.

Defendant insists that there is a distinction between delivering lumber at Ashdown for local consumption and delivering it at the same point to connecting railways for movement to points beyond, and that therefore Ashdown and other junction points were excepted from the application of the lower scale of rates. The only reason for this distinction which defendant's witness could assign was that defendant's equipment would be out of its service, until returned by the connecting line, but in view of the per diem allowance and other considerations, it was conceded that the difference was slight. Defendant also sought to justify the rate on the ground that it is a part of a blanket system of rates. However, we can not approve a blanket rate which imposes upon any points an unreasonable burden. Upon the basis of the rate charged complainant the rate per ton per mile is 17.8 mills, while according to defendant's exhibit the average rate per ton per mile, under the 18-cent blanket rate is 9.8 mills. At the 7½-cent rate sought the earnings per ton per mile would be 7.4 mills. The annual report of defendant for the year 1910, shows its average ton-mile earnings on lumber to have been 5.81 mills, and on all traffic 7.25 mills.

Upon consideration of all the facts and circumstances disclosed by the record we are of the opinion and find that the rate charged

for the transportation of the shipments involved was unreasonable to the extent that it exceeded 10 cents per 100 pounds, which we also find to be a reasonable maximum rate for the future.

We further find that complainant made the shipments in accordance with the above statement of facts and paid charges thereon at the rate found herein to have been unreasonable; that complainant has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate herein found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$331.52, with interest from February 26, 1910. Defendant may waive collection of the undercharge of \$6.41 above referred to. An order will be entered in accordance with the findings herein announced.

No. 4679.

LAFAYETTE TAYLOR

v.

NORFOLK & WESTERN RAILWAY COMPANY.

Submitted October 26, 1912. Decided December 10, 1912.

The former rate of \$1.20 a ton for the transportation of coal from the Thacker and Kenova coal fields of West Virginia to Rarden, Ohio, found to have been unreasonable, and reparation awarded on the basis of the subsequently established rate of \$1. The latter rate, also complained of as unreasonable, found not to have been excessive.

H. G. Binns for complainant.

Charles J. Risley, Theodore W. Reath, and R. Walton Moore for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

For some years the stations between Portsmouth and Cincinnati on the line of the Norfolk & Western in the state of Ohio were divided, with respect to coal from mines in the Thacker and Kenova fields of West Virginia, into two groups, the western group taking a rate of \$1.20 a ton, while the eastern group took a rate of \$1.10 a ton. The dividing line was just west of Henley, a point in the eastern group 15 miles west of Portsmouth. Most of the intermediate points

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were in the western group and took the higher rate. While those rates were in effect to points in the respective groups, the rate to Portsmouth, the nearest point in this rate structure, was 75 cents a ton, while the rate to Cincinnati, the most distant point, was \$1. This relation of rates was maintained until May 15, 1911, when the \$1 rate to Cincinnati was extended also to the intermediate points.

At one of these points called Rarden, a small town of about 400 inhabitants, the complainant conducts a stone quarry, in connection with which some coal from the mines in question is used. He also supplies the domestic wants of the local community. Rarden was in the western group of intermediate points and took the \$1.20 rate until the Cincinnati rate of \$1 was extended to it as stated. On February 1, 1912, a few months after the latter rate became effective at Rarden, this proceeding was instituted. The petition as originally filed alleged that the previous rate of \$1.20 was unreasonable; it also questioned its propriety under the fourth section. No issue was made, however, respecting the reasonableness of the new \$1 rate. On the contrary, taking that rate as the basis of his demand, the petitioner prayed for reparation on 58 carloads of coal that had moved under the previous rate of \$1.20. In other words, at the time the petition was filed it is clear that the complainant regarded the present \$1 rate as reasonable. Pending the hearing, however, he was permitted to amend the petition by alleging that it was then and now is not only unreasonable in and of itself but unreasonable relatively. He also alleged that 85 cents a ton would have been a reasonable rate to Rarden when his shipments were made and would be a reasonable rate for the future.

The record made is addressed to this broader issue and includes a demand for reparation on the basis of such rate as the Commission may find was a reasonable rate for the service. It may be well to add at this point that the coal consumption at Rarden is very limited, and the case is of importance more because of the number of localities and the number of coal rates that will indirectly be affected by any reduction in the rate to Rarden than because of the direct effect on the defendant's revenues from its coal traffic to that point. The Pocahontas and Tug River coal districts take a differential to the present Portsmouth-Cincinnati group of 10 cents and the Clinch Valley field a differential of 35 cents a ton over the Thacker and Kenova districts. A change in the rate from the latter fields, it is said, will necessarily require a reduction in the rates from the other two coal districts served by the defendant. The greater portion of the complainant's shipments originated in the Thacker district.

It was stipulated by the parties at the hearing that any fact appearing of record in *In Re Advances on Coal*, 22 I. C. C., 604, might be re-

ferred to on the argument without being formally introduced in evidence in this proceeding; and much of the brief filed on behalf of the complainant is devoted to an effort to apply here the cost figures that were developed by the Commission in its investigations in that case. On the basis of those figures the complainant, as we understand the argument, asserts that the average cost, during the year 1910, of transporting coal from the Thacker district to Rarden, including the assembling cost and the cost of the empty-car movement, was approximately 34.82 cents a ton. The average haul is stated of record at 157 miles. But his demand for relief herein is not based on the cost figures as worked out in the brief filed on his behalf; it is expressed concretely in the statement that Rarden and a point called McDermott should be on the same rate basis. Both of these points now take the \$1 rate. The complainant contends, however, that the rate of 85 cents per ton formerly in effect to McDermott would be a reasonable rate from the Thacker district to Rarden. The general theory of the complaint is more graphically laid before us in the statement that with a rate of 75 cents a ton from the Thacker field to Portsmouth, an average haul of 132 miles, the addition by the defendant of 25 cents a ton for the further haul of 25 miles to Rarden results in an unjust and an unreasonable tax upon the traffic. For the further haul an addition of 10 cents, making a total charge of 85 cents, would yield the defendant reasonable revenues in the judgment of the complainant.

It appeared in the case cited that Portsmouth is an assembling point in the coal traffic of the defendant and is on its main line extending to Columbus, where it joins other lines to the lakes. This part of its system is known as the Columbus division. It has double tracks and the coal traffic over it is very heavy and moves in train loads. The operating conditions are relatively easy. The defendant's single-track line from Portsmouth to Cincinnati is referred to on the record as its Cincinnati division, and the grades and curves and other conditions are such as to make its operating cost relatively heavy. This is shown by its statistics, for the year ending June 30, 1910:

The operating ratio on the Cincinnati division during that year was 83 per cent, as compared with an operating ratio on the Columbus division of 66 per cent. Moreover, the traffic is comparatively light over the Cincinnati division. For the same fiscal year the defendant's revenue tons per mile of road for the Cincinnati division were 981,397, as compared with 9,712,830 tons over the Columbus division. This difference in the density of traffic over the two divisions is shown even more clearly by the fact that the net earnings per mile of road over the Cincinnati division for that year were but \$1,385.76, as compared with net earnings of \$11,788.20 for the Columbus division.

It appears also that the empty-car movement and other conditions on the Cincinnati division are relatively much more burdensome than on the Columbus division.

The low coal-traffic cost figures, so carefully and laboriously worked out by the Commission in *The Lake-Coal case, supra*, resulted from the low levels, easy curves, and other good operating conditions on the Columbus division of the defendant, the great volume of its coal shipments, its movement in trainloads, the density of its general traffic, and other conditions that tend to economy in operation. Those figures have since been applied in other cases where similar general conditions were shown to prevail. But they were not intended as a general basis for conclusions in all cases involving rates on coal, and can be relied on as a rational and reasonable guide in other cases only when substantially similar conditions exist. This is not the case here, as the statistics of the defendant clearly demonstrate.

Moreover, in applying those figures here the complainant also overlooks the fact that the producing points as well as the points of consumption are grouped. The group between Portsmouth and Cincinnati is 107 miles long. The longest haul from any producing point named of record to Cincinnati is 261 miles. The average haul from the mines in the Thacker district to all points of consumption in the group is 191 miles. Group rates on a commodity so vital as coal in the life and progress of every community have long been sanctioned, and, compared with other coal groups, the one now before us, in area and extent, seems to be an entirely reasonable application of that principle of rate construction.

In all rate groups there must necessarily be a more or less abrupt "rate hump" as between the most distant point in one group and the nearest point in the adjoining group. This is the case here. But the fact that Rarden takes a \$1 rate, while Portsmouth, but 25 miles east of it, takes a 75-cent rate, is not of itself sufficient to condemn the Rarden rate as unreasonable or discriminatory. Nor is the fact that Cincinnati, 82 miles beyond, takes the \$1 rate sufficient to condemn as unreasonable the same rate to Rarden.

That, however, is the view of the complainant as we gather it from the brief filed in his behalf. Disregarding the difference in conditions he applies the cost figures over the Columbus division to the coal movement over the Cincinnati division. Disregarding also the fact that Rarden is in a reasonable rate group he applies the cost figures for the Columbus division to the average haul to Rarden, overlooking the fact that a decrease in the mileage divisor necessarily makes the cost per ton per mile for a short haul relatively greater than for a long haul. As is well said by the defendant, the result of this disregard of a fundamental principle pertaining to the cost of

traffic is intensified when the long haul movement is in through trains and in trainloads, as in the case cited, while the short-haul movement, as in the case before us, is in local trains and in carloads. That view would involve the breaking up of this rate group and the grading of the Cincinnati rate back to Portsmouth. We see no grounds for pursuing that course. It is true that the average haul on this coal to Cincinnati is 239 miles, while the average haul to Rarden is but 157 miles. But we think it fully established by this record as well as by the record in the case cited that the Cincinnati rate is controlled by the competition of other coal fields, and even more directly by the large movement to that point by water. Portsmouth, as will also be remembered, is an Ohio River point.

Many rate comparisons are made on both sides, but it will not be necessary to state them here in detail. It will suffice to say that a careful examination of them lends support to the conclusion that the present rate of \$1 a ton to Rarden is not unreasonable or discriminatory. We think, however, and so find, that the complainant is entitled to the reparation claimed, with interest from May 1, 1911, on all shipments moving within two years prior to the filing of his informal complaint herein on October 5, 1911, not on the theory that the rates collected were in violation of the fourth section of the act, but on the theory that they were unreasonable rates for the service performed.

An order will be entered in conformity herewith.

25 I. C. C.

No. 3372.
IN THE MATTER OF KEYSTONE ELEVATOR COMPANY.

Submitted December 10, 1912. Decided January 7, 1913.

The Pennsylvania Railroad Company should desist from leasing the elevator property located at North Philadelphia, Pa., to the Keystone Elevator & Warehouse Company so long as the stockholders of the latter are owners wholly or in part of the property passing through such elevator, and should cease from paying any allowance for terminal services to such elevator company upon any property passing through such elevator belonging wholly or in part to any stockholder of said elevator company, unless such railroad's published tariffs shall at the same time offer such allowance to all other shippers using said or any other elevator in the city of Philadelphia.

J. H. Marble, J. J. Hickey, and S. H. Smith for Interstate Commerce Commission.

George Stuart Patterson for Pennsylvania Railroad Company.

M. Hampton Todd for Keystone Elevator & Warehouse Company.

William A. Glasgow, jr., and Chester N. Farr for E. L. Shute & Company.

Augustus F. Daix, jr., for Retail Feed & Grain Dealers' Association.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

This is an investigation instituted by the Commission of its own motion. The order of investigation is as follows:

Complaint being made that the Pennsylvania Railroad Company, a corporation common carrier subject to the act to regulate commerce, approved February 4, 1887, and the acts supplementary thereto, being the owner of a certain grain elevator at North Philadelphia, Pa., known as the Keystone elevator, has leased said elevator to a corporation known as the Keystone Elevator & Warehouse Company, and has entered into an arrangement with said Keystone Elevator & Warehouse Company by which the latter is paid an allowance for unloading and elevating carload shipments of grain at said elevator; and complaint being further made that said Keystone Elevator & Warehouse Company is controlled by a copartnership known as L. F. Miller & Sons, and the members thereof, grain dealers at said North Philadelphia handling grain through said elevator; and that said lease and said allowance and the methods of business pursued in the operation of said elevator are unduly preferential to said grain dealers, and result in giving them substantial and undue advantages over other shippers of grain via said railroad to said North Philadelphia and to points competitive therewith, it is ordered, That a proceeding of investigation be, and the same hereby is, instituted into the above-described matters, and that said Pennsylvania

Railroad Company and said Keystone Elevator & Warehouse Company be, and they hereby are, made defendants in said investigation.

Hearings at which all interested parties were represented by attorney have been held, and the following facts have been developed:

The elevator in question was built by the Pennsylvania Railroad Company in the year 1903, pursuant to a contract with the Germantown Junction Elevator & Warehouse Company, a corporation. By this contract the railroad leased to the Germantown company for five years a plot of ground adjoining its tracks at North Philadelphia, Pa., and constructed thereon, wholly at the expense of the railroad, a fully equipped grain elevator and a warehouse.

Subsequently, and in the year 1903, the Germantown company transferred all its rights under this contract and lease to the Keystone Elevator & Warehouse Company, a corporation (hereinafter referred to as the elevator company), and one of the defendants herein.

The value of the lands belonging to the railroad company included in the lease is stated by the railroad to be \$15,000. The elevator structure and the machinery therein contained cost the railroad company for construction \$163,065.09. The annual expense to the railroad company of maintaining the Keystone elevator has throughout the period since 1903 averaged \$3,805.50 per annum.

The rental reserved by the railroad company and paid by the elevator company for the exclusive use of the elevator and warehouse is \$6,000 per year. Deducting from this sum the yearly cost of maintenance borne by the railroad company (\$3,805.50), it appears that the railroad in return for its property, which cost it \$178,065.09 for land and construction, receives an income of \$2,194.50, or about 1½ per cent annually on its investment.

By the contract and lease the elevator company undertook to keep the building and machinery in good order and repair, ordinary wear and tear and damage by fire and unavoidable accidents only excepted; to use all reasonable efforts to secure to the railroad company all traffic controlled by the elevator company or destined to or from the said elevator and warehouse and to confine the services of the elevator to traffic passing over the lines of the railroad company; to unload, load, and handle all grain and merchandise received by it to be shipped over the lines of the railroad company or received by it for delivery to consignee; to promptly notify consignees of the arrival of such shipments and to pay all running expenses of the elevator and warehouse; to be responsible to the railroad company for the prompt collection of all freights and other charges upon inbound grain and merchandise; to indemnify the railroad company for all damage to or loss of grain and merchandise in the custody of the elevator company and to maintain fire insurance on such grain

and merchandise; to notify the railroad in writing of the failure of any consignee to remove freight and to observe and comply with all directions with respect to such freight which may be received by it from the railroad company; to take charge of grain as warehousemen for account of the owners thereof at the expiration of the period currently given by the railroad company as free time.

The railroad company by the original lease bound itself to pay to the elevator company 35 cents per ton for each ton of grain and merchandise handled through said elevator and warehouse, excepting that no payment was to be made upon traffic for the movement of which the railroad company received only a switching rate. By an amended lease made on April 30, 1910, this allowance was changed to read as follows:

To pay to the elevator company twenty (20) cents per ton of two thousand (2,000) pounds on all grain delivered from the elevator to teams, or loaded out of the elevator into cars for local delivery in the city of Philadelphia, it being understood that this applies solely to grain consumed in the city and not to business destined to points outside of the city, or to points reached by water; thirty-five (35) cents per ton of two thousand (2,000) pounds on hay, straw, and other merchandise delivered into or received from the elevator company's warehouses at North Philadelphia, except that no payment shall be made upon merchandise which it is customary for the railroad company to deliver directly from car on the track and not through railroad warehouse or across railroad platform, nor upon traffic on the movement of which the railroad company has only received a switching rate, or material and supplies belonging to the railroad company.

Grain doors, or lumber for the construction of grain doors will be furnished by the railroad company, or if provided by the elevator company an allowance not to exceed fifty (50) cents per grain door will be made to the elevator company, but in no instance will allowance for grain doors for any one car be made in excess of two dollars (\$2) and an allowance of one-quarter of a cent per bushel will be made to the elevator company on all grain passing through the elevator which is not intended for local delivery in the city of Philadelphia and such published allowances to continue so long as similar allowances are made at other points, and tariff covering these allowances must be published and filed with the Interstate Commerce Commission.

In addition to these allowances the elevator company has the right under the contract to charge shippers who patronize the elevator and warehouse customary rates for services performed or facilities furnished, the charges so made to be subject to the approval of the railroad company. In accordance with the latter provision, the Pennsylvania Railroad Company has filed with this Commission the charges to be assessed by the elevator company against shippers for services rendered by the elevator company. These charges inure wholly to the benefit of the elevator company, and are in addition to the allowances paid by the railroad company.

The elevator company, although paying dividends of \$16,000 per year upon its stock, has no property whatever except its rights under the leasehold.

The stock issue of the elevator company is \$100,000, divided into 10,000 shares, and is all issued. Considerable difficulty was experienced in determining the real owners of the stock, the list of stockholders shown by the books being incorrect and misleading. As shown by the record, the stock of the elevator company at the time of hearing was divided as follows: Harvey C. Miller, 2,000 shares; H. C. Vallentine, 200 shares; L. V. Carscaddin, 40 shares; William E. Dutton, 100 shares; M. K. Reeves, 100 shares; R. M. Richards, 200 shares; various owners, 7,360 shares.

It was finally developed at the hearing that 7,360 shares shown by the books to be owned by various persons in various cities are and always have been the property of Harvey C. Miller, and it was admitted by him that the stock was held in the names of other persons with a view to concealing his ownership thereof. The Commission is not content with the showing made regarding the ownership of the stock standing in the name of H. C. Vallentine, L. V. Carscaddin, William E. Dutton, M. K. Reeves, and R. M. Richards. So far as the evidence goes, however, it is claimed that Vallentine actually paid money for his stock. He was unable to remember to whom he paid the money or how much he paid. Mr. Reeves appears to have given a note to Harvey C. Miller for the 100 shares standing in his name. The 200 shares standing in the name of R. M. Richards were stated to have been given to Mr. Richards as a bonus on a contract of employment. The evidence is without conflict, however, that 9,360 shares, or 93.6 per cent of the entire stock issue of the elevator company, is the property of Harvey C. Miller.

It further appears that Harvey C. Miller did not pay anything for the stock which he owns and controls and that the said payments by Vallentine, Carscadden, Dutton, Reeves, and Richards constituted all the paid-in capital stock of the elevator company. Harvey C. Miller at the time the machinery of the Philadelphia Cleaner Company was installed in the elevator received a cash bonus of \$10,000 from the elevator company.

Harvey C. Miller is shown by the record to be one of the partners in the firm of L. F. Miller & Sons, grain dealers. The evidence shows that this firm owns and merchandises about 92 per cent of all the grain passing through the elevator property here in question.

From July 1, 1907, to June 30, 1908, the receipts of the elevator company for all services rendered in the operation of the property here considered were \$101,181.10. Of this amount the Pennsylvania Railroad paid \$47,809.97, while L. F. Miller & Sons paid \$48,572.63. Sundry owners of grain, hay, and flour passing through the elevator and warehouse paid the remaining sum of \$4,798.50.

Of this total income the elevator company expended \$91,165.15, as follows:

Labor and salaries.....	\$17,740.00
Rent.....	6,810.00
Sundry expenses.....	6,735.60
Dividends.....	16,000.00
Philadelphia Cleaner Company.....	43,879.55

From July 1, 1908, to June 30, 1909, the income of the elevator company for all services rendered in the operation of the property here considered was \$74,563.85. Of this amount the Pennsylvania Railroad paid \$37,477.85, while L. F. Miller & Sons paid \$34,057.55. Sundry owners of grain, hay, and flour passing through the elevator and warehouse paid the remaining sum of \$3,028.45.

In the same period the elevator company expended \$80,463.02, as follows:

Labor and salaries.....	\$17,055.00
Rent.....	6,810.00
Sundry expenses.....	6,803.19
Dividends.....	16,000.00
Philadelphia Cleaner Company.....	33,794.83

As Harvey C. Miller was the Philadelphia Cleaner Company and the holder of 93.6 per cent of the stock of the elevator company, it appears that in the two capacities he received from the elevator company for the year ending June 30, 1908, \$58,855.55 and for the year ending June 30, 1909, \$48,770.83. These payments to Mr. Miller exceeded the entire amount collected by the elevator company for elevator and warehouse services from all shippers by the sum of \$5,484.42 in the first year and by the sum of \$11,684.83 for the latter year.

The Philadelphia Cleaner Company, which receives each year from the elevator company a payment practically equivalent to the entire amount paid by L. F. Miller & Sons to the elevator company, is not a corporation. It was finally developed that it is the name under which Harvey C. Miller does business as the patentee and owner of certain cleaning machines which he installed in the elevator in consideration of the bonus of stock and cash mentioned above. The Commission requested that F. C. Dickson, vice president and manager of the Kentucky Public Elevator Company, of Louisville, Ky., whom it had selected as its expert, be allowed to examine this machinery to determine its value. Although Mr. Dickson occupied an entirely impartial position, and was fully qualified as an expert in the operation of elevators and grain-cleaning machinery, this request was refused. An employee of the Keystone Elevator Company, however, in his testimony described the cleaning machines. Mr. Dickson testified that the processes and results claimed by this testimony were not substantially different from those known wherever "off-grade" grain is

treated. He further testified that the cleaning machinery in use in the public elevator at Louisville, Ky., occupying a building separate from the elevator building proper, cost, including building, \$27,000, and that it is capable of producing and does produce all the results claimed for the cleaning machinery in the Keystone elevator.

It fully appears that the Keystone Elevator & Ware House Company, almost entirely owned by Harvey C. Miller, pays to Harvey C. Miller for the use of cleaning machines each year considerably more than the total cost of construction of these machines and considerably more than their total value. It is enabled to make this payment of money to Mr. Miller over and above the dividends on the elevator stock owned by him by reason of the allowances paid to the elevator company by the Pennsylvania Railroad Company.

Moreover, the superintendent of the Keystone elevator and a representative of this Commission made an examination of the elevator company's books. From the statement jointly made by them it appears that the total earnings of the elevator company between July 1, 1908, and July 1, 1909, for the handling of grain upon which the machinery of the Philadelphia Cleaner Company could by any possibility have been used amounted to only \$23,852.20. Even if all of the earnings upon this grain, therefore, were allotted to these cleaning machines, it would still remain that the elevator company paid to H. C. Miller in his capacity of Philadelphia Cleaner Company, for the use of the machines in that year, \$10,000 more than the total income earned by them.

The railroad company asserts that such an arrangement as this is necessary for the proper operation of the elevator. It claims that it can not supply the technical skill necessary for the operation of the grain elevator, while the Keystone Elevator & Warehouse Company, as managed by Harvey C. Miller, is able to procure this technical skill. It is not content to leave the elevator business in private hands and is at the same time unable to administer it directly. The Commission, unless so advised by the Pennsylvania Railroad Company, would be loath to place such an estimate upon its capacity.

Unless the suggestive language of the lease above quoted is to be heeded, and these allowances are regarded as concessions from rates for the benefit of favored shippers, the alternative conclusion is inevitable that the contract between the Pennsylvania Railroad Company and the Keystone Elevator & Warehouse Company is unfair to the former and is a drain upon its revenues without corresponding advantage. The valuable property is furnished for a net return of less than two per cent per annum upon its cost, and in addition allowances are paid which are so far excessive in amount that the cleaner machinery contract has been devised for the purpose of with-

drawing them into the possession of a grain shipper who is the chief stockholder of the elevator company. The conclusion is unavoidable that this contract is grossly discriminatory as against the dealers shipping grain over the Pennsylvania Railroad and competing with the firm of which Mr. Miller is a member.

In this connection the Commission is now advised that Harvey C. Miller has sold his interest in the grain-dealing firm of L. F. Miller & Sons to the other partners. He now presents himself for consideration as a stockholder of the Keystone Elevator & Warehouse Company, having no interest by way of ownership in the shipments which pass through the elevator, and which are the occasion of the payment of allowances. It is urged, therefore, that no element of discrimination is left in the arrangement under consideration. In view of the difficulties met in this proceeding, and above outlined, in determining the relationship of Mr. Miller to the elevator company and to the Philadelphia Cleaner Company, the Commission is not inclined to dismiss this proceeding upon the statements now made to it. If the railroad company chooses to continue to lease its property under the terms above outlined, and to continue to make such payments, those continuing in the arrangement must take the burden of determining that the conditions and relations which have existed in the past are radically altered. An order will therefore be entered directing the Pennsylvania Railroad to cease and desist for the period of two years from leasing the elevator property above mentioned to the Keystone Elevator & Warehouse Company so long as the stockholders of the latter are owners wholly or in part of the property passing through such elevator, and to cease and desist for the period of two years from paying any allowance for terminal services to the Keystone Elevator & Warehouse Company upon any property passing through such elevator belonging wholly or in part to any stockholder of said Keystone Elevator & Warehouse Company unless its published tariffs shall at the same time offer such allowance to all other shippers using said or any other elevator in the city of Philadelphia.

25 I. C. C.

No. 4664.

WICHITA BOARD OF TRADE

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 23, 1912. Decided January 7, 1913.

The complaint asks that the joint rates on grain and grain products from points in Kansas on the Union Pacific Railroad to points in Texas via the Atchison, Topeka & Santa Fe Railway and via the Chicago, Rock Island & Pacific Railway be reduced to the basis of rates prescribed by the Commission in *Farmers, Merchants & Shippers Club v. A., T. & S. F. Ry. Co.*, 12 I. C. C., 351, to apply on grain from points in Kansas on the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific to points in Texas; *Held*, That the present case is not controlled by the case cited. The rates attacked, however, are found to be unreasonable in so far as they exceed rates made on the basis prescribed in the above case with an arbitrary added to allow for a two-line haul. The carriers will be given an opportunity to publish and file such rates. No order will be entered at this time.

A. E. Helm for complainant.

T. J. Norton and *A. A. Hurd* for Atchison, Topeka & Santa Fe Railway system lines.

W. F. Dickinson for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; El Paso & Southwestern Company; and Trinity & Brazos Valley Railway Company.

James G. Wilson and *N. H. Loomis* for Union Pacific Railroad Company.

F. H. Wood for St. Louis, San Francisco & Texas Railway Company.

John C. Schaich for Kansas City Southern Railway Company.

Fred G. Wright and *Henry G. Herbel* for Texas & Pacific Railway Company; International & Great Northern Railroad Company; Weatherford, Mineral Wells & Northwestern Railway Company; and Denison & Pacific Suburban Railway Company.

F. C. Dillard, *H. A. Scandrett* and *L. T. Wilcox* for Galveston, Harrisburg & San Antonio Railway Company; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; Texas & New Orleans Railroad Company; and Union Pacific Railroad Company.

Charles W. Lonsdale and *H. G. Wilson* for Board of Trade of Kansas City, Mo., intervener.

25 I. C. C.

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REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The grain dealers and millers of Wichita, Kans., allege in this complaint that the joint rates on grain and grain products from points in Kansas on the lines of the Union Pacific Railroad Company to points in groups 1, 2, and 3 in Texas, via the lines of the Chicago, Rock Island & Pacific Railway Company and via the lines of the Atchison, Topeka & Santa Fe Railway Company are unreasonable and discriminatory, and ask that these joint rates be reduced to the basis of the rates prescribed by this Commission in *Farmers, Merchants & Shippers Club v. A., T. & S. F. Ry. Co.*, 12 I. C. C., 351, to apply on grain from points in Kansas on the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific to the same Texas points.

The state of Kansas is crossed from west to east by the Union Pacific, the Atchison, Topeka & Santa Fe, the Chicago, Rock Island & Pacific, the Missouri Pacific, and the St. Louis & San Francisco, all of which enter Kansas City, Kans. Each of these roads, except the Union Pacific, also has a line extending from Kansas to Texas. Wichita is located in southern Kansas, on main lines of the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific, and on branch lines of the Missouri Pacific and the St. Louis & San Francisco Railroad Company. It will be observed that while the four latter roads all extend from the Kansas grain fields through Wichita into Texas, the Union Pacific neither reaches Wichita, nor extends into Texas.

Previous to the decision in the *Farmers, Merchants & Shippers case, supra*, rates on grain and grain products from Kansas points to Texas points were all made by combination on Kansas City, except those applying from southern Kansas, which were made through Wichita on a differential lower than the Kansas City combination. In the above case the Commission required the Santa Fe and the Rock Island to apply through rates on grain from points on their lines in Kansas into Texas, which were constructed by adding to rates prescribed from Wichita, one-half cent per 100 pounds for each additional 50 miles north or west of Wichita. These rates had the effect of causing more grain to move through Wichita, and in connection with the transit privileges existing at Wichita they helped to enlarge the milling activities of this city. Following the order in that case the Missouri Pacific and St. Louis & San Francisco for competitive reasons revised practically all of their rates from Kansas points to Texas points so as to bring them into harmony with the rates above described. The Union Pacific, however, has never chosen to adopt this basis of rates.

The joint rates herein attacked apply from Union Pacific points to Texas points in connection with the Rock Island and the Santa Fe. They were introduced under the following circumstances: The Kansas City Southern Railway runs from Kansas City south to Port Arthur, Tex., connecting with carriers that reach all parts of Texas. This line does not extend to the Kansas grain field, and so after the rates prescribed by this Commission to apply over the Santa Fe and the Rock Island became effective, the Kansas City Southern got practically none of the grain traffic from Kansas to Texas. In order to participate in this traffic this road established proportional rates to apply from Kansas City to Texas points. These proportionals were fixed in the following manner: Since certain points on the Union Pacific are also located on the Santa Fe and the Rock Island, the through rates from these junction points were fixed by the order in the case above referred to. The proportionals from Kansas City on grain from these junctions were therefore constructed by deducting from these through rates the Union Pacific locals up to Kansas City. The proportionals from Kansas City on grain from points intermediate to any two of these junction points were then made by deducting the Union Pacific local to Kansas City from the through rate applying from the junction point taking the higher through rate. Soon after the introduction of these proportionals the Santa Fe and the Rock Island, wishing to share in the traffic to Texas from Union Pacific points intermediate to the junctions, entered into joint rates with the Union Pacific from these points equal to the through rates applying via the Union Pacific and the Kansas City Southern. In order to do this, however, it was necessary for these lines to allow the Union Pacific as its divisions its full locals up to Kansas City, although the traffic leaves the Union Pacific at junctions west of Kansas City. It will be seen that while the present through rates from Union Pacific junctions with the Santa Fe and the Rock Island are the same as those prescribed in the *Farmers, Merchants & Shippers case*, the rates from many of the points intermediate to these junctions are on a higher scale. Complaint is now made of the latter joint rates, all of which apply through Wichita (together with rates from certain points on the Union Pacific in Kansas, which are still made by combination on Kansas City, but on which very little grain moves).

This complaint is based chiefly on the assumption that the rates on grain and grain products from Union Pacific points should be the same as the rates prescribed in the *Farmers, Merchants & Shippers case* from Rock Island and Santa Fe points in Kansas. But in further support of the complaint it was urged—(1) That the present adjustment of rates deprived the millers and grain dealers at Wichita of markets in which to buy, and the farmers located on the Union

Pacific of markets in which to sell, this grain, and (2) That the fact that the Union Pacific received as its division of these rates its full local to Kansas City, although its haul extended only to a junction, tended to show that these rates were excessive.

The record shows that while a great quantity of grain moves from Santa Fe, Rock Island, Missouri Pacific, and Frisco points in Kansas via Wichita, where much of it is milled, to Texas, practically no grain moves from Union Pacific points to Texas, either via Wichita or Kansas City. The territory tributary to the Union Pacific, it was stated, produces about 20 per cent of the wheat and 15 per cent of the corn raised in Kansas, yet at most times it is impossible for the Wichita miller to buy any grain at points on the Union Pacific, mill it at Wichita, and sell the products in Texas. It was conceded by the complainants that grain produced on the Union Pacific east of Salina would naturally move to Kansas City. But the greater part of the crop produced on the Union Pacific in Kansas is raised west of Salina. Practically all of this grain at present moves eastward through Kansas City or west to the Pacific coast, whereas it is urged if the rate adjustment were fair much of it would move to Texas via Wichita.

There was much conflict of testimony as to the effect of the present rates on the farmers located on the Union Pacific in Kansas. There was no appearance on behalf of these producers, but the representatives of Wichita urged that the present rates were unfair to these farmers because they restricted competition among buyers and thus made prices low. Witnesses for the complainant testified that farmers on the Union Pacific received 3 to 5 cents a bushel less for grain than was received by other Kansas farmers, because the rate adjustment of which Wichita complains restricts the market in which this grain can be sold to Kansas City and a few other points east and west. If the rates from Union Pacific points were reduced as complainant asks then, it is contended, the farmers on this line would be able to get higher prices.

On the other hand, witnesses for the defendants testified that Union Pacific farmers got as much and at times more for their grain than other Kansas farmers. One witness testified that farmers located at certain points midway between the Union Pacific and the Rock Island lines hauled their grain to the Union Pacific station because they received higher prices there. The view was expressed by another witness that the prices at Union Pacific points were higher under the present rate adjustment than they would otherwise be, because eastern markets as well as Texas markets are now able to bid, whereas if the lower rates requested were put in, only the markets to the south could bid for this grain.

In view of this conflict of testimony it is difficult to arrive at any definite conclusion as to whether or not the prices received for grain by farmers on the Union Pacific are lower than those received by other Kansas farmers. The prices of grain at milling points are commonly higher than at producing points, because elevator and transit charges are added at the milling points. Furthermore the local supply and demand at any particular time would cause varying fluctuation in price at different points in the same district. These considerations account for the conflict in testimony, but in view of this conflict it is not clear from the record that the average price of grain at Union Pacific points differs from that obtaining at other points in Kansas. It is clear, however, that the Wichita miller is at most times unable to compete with the Kansas City dealer for this grain owing to the rate adjustment, and the inevitable tendency of such lack of competition is to keep down the price. The maintenance of reasonable rates to Texas points is therefore of concern to these producers as well as to the dealers at Wichita.

As to the division of these rates the complainants contend that it is extraordinary for a carrier to receive a division of a joint rate which is larger than its local to the junction. In reply the Union Pacific says that in accord with common railroading practice it would be unfair to the originating line to require it to short haul itself by turning over its tonnage to other carriers at junction points when it can secure the haul to its terminus. Furthermore it is stated on behalf of the Union Pacific that the local rates on grain have been reduced 15 per cent by the Kansas legislature and therefore they furnish no measure as to what its division of these joint rates should be. The Rock Island and the Santa Fe both state that they believe it to be entirely fair for the Union Pacific to demand as its division its full local to Kansas City, and yet these lines declare that if the joint rates were reduced, they could not afford to accept lower division than they are now receiving. These carriers point out that the divisions now allowed them for the hauls from the Union Pacific junctions are considerably lower than the through rates prescribed from these junctions in the *Farmers, Merchants & Shippers case*. It was also shown that these divisions were in many cases shared with connecting lines in Texas, and in such cases the earnings realized by the Santa Fe and Rock Island were very low. To this the complainants reply that while the Santa Fe and Rock Island may realize small earnings out of these joint rates this is because the Union Pacific is receiving more than its just share.

On behalf of the Union Pacific, it is urged that this line and its feeders were constructed and are operated primarily for the purpose of developing traffic that moves between the east and the west. This carrier, as above stated, has no branches extending into Texas, like

the carriers which were before the Commission in the *Farmers, Merchants & Shippers case*. If grain produced at points on this line goes to Texas, the normal movement is along the Union Pacific to Salina, Manhattan or Topeka, Kans., where the Union Pacific has a junction with one of the carriers serving Texas, and thence over the line of such other carrier to destination. But if this grain goes to the east the Union Pacific gets the haul right up to its terminus at Kansas City. It is therefore to the interest of the Union Pacific to so adjust its rates that all the grain produced on its line shall move east, and the Union Pacific frankly admits that this has been its policy. In pursuance of this policy it has refused to enter into joint rates with lines running to Texas points, except on condition that it receive as its division of such joint rates its full locals to Kansas City. It is but fair, the Union Pacific contends, that it be permitted to so influence the movement of traffic originating on its line as to secure the longer haul.

The Union Pacific further points out that it is to its interest to encourage the movement of grain produced on its line to the east rather than to the south because only thus can it retain control of its equipment. If the Union Pacific delivers grain to a connecting carrier at a junction, it is said, it must deliver it loaded in the car, because there are not adequate elevator facilities at any of the junctions, and when its cars are thus sent to destinations in Texas, it has found by experience that during the grain-shipping season they are not returned for from 60 to 90 days. Thus the movement of Union Pacific grain to Texas points through a junction point deprives the Union Pacific of its equipment for long periods of time. If, however, the grain moves east the cars are readily unloaded and released, since there are ample elevator facilities at Kansas City.

The protection of milling industries at points on its line is another reason given by the Union Pacific for wishing to encourage the movement of its grain east rather than south. There are now 85 mills operating along the line of the Union Pacific in Kansas, which, like this railroad, were built to take care of traffic moving to the eastward. At the present time it is said that 75 per cent of the wheat produced on the Union Pacific is milled by these local plants. If the movement of this grain to Texas points, rather than to the east, is encouraged, the milling of this grain would to an extent be transferred to points like Wichita, located on other railroads. In fact it is because the millers and grain dealers of Wichita desire to bring about this result that they are now seeking lower joint rates. At the hearing, several of the millers located on the Union Pacific were represented, and on their behalf it was urged that a reduction of the present rates to Texas should not be made, because it would ruin their business by effecting a discrimination against them, and in favor of Wichita. In

view of its interest in these local industries, the Union Pacific contends that it is justified in maintaining an adjustment of rates necessary to protect them.

Finally, it was urged by the Santa Fe, the Rock Island, and the connecting carriers operating in Texas, as well as by the Union Pacific, that the present joint rates are reasonable. These rates, the defendants contend, may properly be on a higher scale than those prescribed by the Commission in the *Farmers, Merchants & Shippers case* since the Commission in that case was fixing rates for one-line hauls, whereas in the present case the hauls involved are necessarily over two lines. In this connection it is pointed out that while the Santa Fe has been forced to make these joint rates to points on its line in Texas it has deemed it necessary to charge higher rates to points in Texas beyond its line.

The Commission has many times expressed the view that the division received by a carrier as its share of a joint rate is not conclusive evidence of the unreasonableness of the joint rate involved. Divisions between carriers are a matter for bargaining between them and only in case they can not agree is this Commission warranted in attempting to fix them. In the present case all the carriers participating in these divisions expressed the view that the share received by the Union Pacific was fair under the circumstances. It is clear from the record that the divisions received by the lines connecting with the Union Pacific are relatively small, with the result that those received by the Union Pacific are relatively large. But since these divisions are determined by highly competitive conditions, they throw no light whatever on the reasonableness of these joint rates.

We have stated above the defense relied upon by the carriers. We are not impressed by the contention of the Union Pacific that the present adjustment is necessary in order that it may retain possession of its equipment. As we have announced in previous cases, it is proper that the carriers, as between themselves, should adopt reasonable regulations calculated to induce the prompt return of cars by foreign lines, but a carrier has no right to establish regulations or fix rates with a view to controlling the direction in which its equipment shall be employed by the shipping public. *Missouri & Illinois Coal Co. v. I. C. R. R.*, 22 I. C. C., 39. Similarly there is little force in the contention of the Union Pacific that it was constructed primarily to accommodate traffic between the east and west, and therefore is justified in so adjusting its rates from points on its line as to discourage traffic moving to territory which it does not directly serve. Here again there is a field in which the carriers, as between themselves, may compete to promote their conflicting interests, but the shipping public has a right to enjoy reasonable and

nondiscriminatory rates and the private interest of a carrier to have traffic move in a certain direction from points on its line can not defeat or qualify this right.

The contention of the Union Pacific that it is justified in fixing or maintaining such rates as are calculated to develop and protect its local industries is sound only to a degree. It is to the public interest as well as to a carrier's interest to develop all the traffic possible along its line, provided this is not done at the expense of some other individuals or communities. The millers along the lines of the Union Pacific have a right to demand reasonable rates which will give them the full benefit of their location and will enable them to compete on equal terms with other millers similarly located. More than this they have no right to ask, and the Union Pacific has no right to grant. While it has not been established that the farmers along the line of the Union Pacific are injured by the present adjustment of rates, it is obvious that in so far as the present rates unduly favor the millers along this line, these farmers, as well as millers, located on other lines are deprived of markets, and free competition is thus restricted. The contention, therefore, that the present rates are necessary to develop and protect the milling interests on this line is not in itself a justification for these rates, unless it is established that these rates are reasonable and nondiscriminatory.

In the *Farmers, Merchants & Shippers case* we examined the rates on grain applying from all points in the state of Kansas located on the Santa Fe and the Rock Island to the Texas points now in question, and we prescribed through rates to these Texas points, based on rates which we found to be reasonable from Wichita to these points. This basis of rates was established five years ago. The order of the Commission has long since expired, but these carriers and other carriers who voluntarily adopted this basis of rates have continued to follow it. While these rates are not now in issue, the above facts fully warrant the conclusion that they are reasonable to-day. The complainants insist that there is no reason why these rates should not apply from points on the Union Pacific, especially since they apply from some points on the Rock Island north of the Union Pacific. The carriers, as we have seen, reply that our findings in the above case are not controlling here, since the rates there fixed were for a one-line haul, while the rates now attacked are for a two-line haul.

After considering all the facts we have concluded that the present joint rates from Union Pacific points in Kansas to groups 1, 2, and 3 in Texas are in many instances unreasonable. Because of the manner in which they are constructed the rates from points on one side of a junction are the same as from the junction, while the rates applying for the same distance from points on the other side of the junction are very much higher. Many of the rates are therefore

clearly unreasonable. We believe that there should be a consistency in the rates from all Kansas points to the Texas group points, and the logical method of bringing this about is to construct the rates from Union Pacific points on the basis prescribed from Santa Fe and Rock Island points. It is our opinion, however, that some allowance should be made for the fact that a two-line haul, at least, is necessary from Union Pacific points to the Texas group points. The distances between these points range from 600 to 1,000 miles, and the Commission has previously held that on hauls as long as this the reason for allowing a higher charge for a two-line than for a one-line haul largely disappears. In view of all the circumstances in the present case, however, we believe that some allowance should be made because of the additional line haul, and we find that rates on grain and grain products from Union Pacific points in Kansas to points in groups 1, 2, and 3 in Texas are unreasonable in so far as they exceed rates made by adding to rates constructed on the basis prescribed in the *Farmers, Merchants & Shippers case*, an arbitrary of 1 cent per 100 pounds. No order will be entered at this time, but the carriers will be expected to publish and file joint rates substantially in accord with the above conclusions. Unless tariffs containing these new joint rates have been filed by March 1, 1913, an order in accordance with the above views will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 128.
RATES ON KNITTING-FACTORY PRODUCTS.

Submitted November 21, 1912. Decided January 7, 1913.

The tariff schedules under suspension advance the joint rates on knitting-factory products in any quantity from Chicago and near-by points to Little Rock, Fort Smith, and certain other Arkansas points and cancel the proportional rates on these products from Memphis to the same destinations applying on traffic from southeastern points, leaving in effect from many southeastern points the through first-class rates constructed on a differential basis over St. Louis and leaving in effect from other southeastern points combination rates of which the factors west of the river are the first-class rates from Memphis; *Held*, The proposed advances are justified. Order of suspension vacated.

C. S. Bather for Rockford Manufacturers & Shippers Association.

A. R. Bragg and *C. D. Mowen* for Fort Smith Traffic Bureau and Merchants Freight Bureau of Little Rock, Ark., and others.

Fred H. Wood for St. Louis & San Francisco Railroad Company and Chicago & Eastern Illinois Railroad Company.

F. A. Leland for the Arkansas lines.

Fred G. Wright and *Henry G. Herbel* for Missouri Pacific Railway Company; St. Louis, Iron Mountain & Southern Railway Company; Texas & Pacific Railway Company; International & Great Northern Railway Company; and Arkansas Central Railway Company.

George E. Schnitzer for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Advances in the rates on knitting-factory products in any quantity made wholly of cotton, from two distinct territories to Little Rock, Fort Smith, and other Arkansas points taking the same rates, are the subject of this investigation.

The present rate from Chicago, Rockford, De Kalb, Kankakee, and Kewanee, Ill., to Little Rock is 90 cents, and to Fort Smith is \$1; the present rate from Milwaukee, Wis., to Little Rock is 92 cents, and to Fort Smith is \$1.02; the present rate from Waupun, Wis., to Little Rock is \$1.07, and to Fort Smith is \$1.17. These rates from the above points, which will hereafter be referred to as Chicago territory, are joint rates which are just equal to the sums of the

commodity rates from these points to Memphis, Tenn., and a proportional rate of 50 cents from Memphis to Little Rock and 60 cents to Fort Smith. It is proposed to cancel these joint rates and establish in their place joint rates equal to the sums of the present commodity rates to Memphis and the first-class rate from Memphis to Little Rock of 70 cents and a rate 10 cents higher to Fort Smith. Thus it will be seen that the proposed advances will involve an increase of 20 cents in the present joint rates. While the present and advanced rates are made under the influence of the above-mentioned combinations on Memphis, this traffic all moves through the St. Louis gateway.

The present rates from points in Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida not having joint rates to the Arkansas points in question are made by combinations of commodity rates to Memphis and the proportional rates above referred to from Memphis to destination. It is proposed to advance these through rates by canceling the application of the proportional rates, leaving in effect either the through class rates from southeastern points made on a differential basis over St. Louis, or, in the case of southeastern points not taking the differential class rates, leaving in effect combinations of the present commodity rates to Memphis and the first-class rate of 70 cents from Memphis to Little Rock, and \$1 from Memphis to Fort Smith. The advances in the through rates from southeastern points thus produced range from 8 to 40 cents.

Reducing the problem before us to its simplest terms, what the carriers propose to do is to advance the joint rates on knitting-factory products from Chicago and near-by points to the destinations in question, and in order to maintain as far as possible the present relation of rates applying from competitive producing points they are at the same time canceling the proportional rates applying from Memphis on knitting-factory products originating in the southeast, leaving in effect from Memphis only the first-class rates, and thus the through rates from southeastern territory are also advanced.

The justification of the carriers for making the proposed advances from Chicago territory rests on two grounds: (1) That the present rates are anomalous and endanger the whole system of making rates from points east to points west of the river; (2) that dealers in knitting-factory products located at St. Louis have complained of violations of the third and fourth sections of the act resulting from the fact that the rates from St. Louis to Little Rock and Fort Smith are higher than the rates from Chicago to these points, and to correct this condition it is necessary either to reduce the rates from St. Louis or to make these advances from Chicago territory. The latter course is adopted, it is said, because it is more in harmony with the established rate structure and involves no loss of revenue.

That we may clearly understand the first proposition relied upon by the carriers it will be necessary to outline the usual basis on which rates are made from points east of the Mississippi to points in southwestern territory, which includes Arkansas, Oklahoma, Texas, and Louisiana. Class and commodity rates from east of the river to points in these states west of the river are commonly made on a differential basis over St. Louis. The differential varies with the point of origin and the class or commodity involved. Knitting-factory products are rated as first class in official, western, and southern classifications. The first-class differential from points in Chicago territory is 20 cents over the first-class rates from St. Louis. The first-class rate from St. Louis to Little Rock is \$1, and to Fort Smith is \$1.10. Therefore the rates on knitting-factory products from Chicago territory to Little Rock would be \$1.20 and to Fort Smith \$1.30 if made on the differential basis. Since knitting-factory products commonly move on this basis to points west of the river, it is contended that the commodity rates now in question are exceptional and their continuance to these Arkansas points will lead other points west of the river to demand similar rates. The influence of these rates on other rates is feared, particularly, it is said, because they are so low. In support of this statement the carriers filed an exhibit showing that the through rates from Chicago and southwestern points to Fort Smith and Little Rock are relatively much lower than the rates from the former points to Kansas City, Mo.; Wichita, Kans.; Muskogee, Oklahoma City, and other points in Oklahoma.

The present joint rates from Chicago territory are unduly low, it is urged, because they were introduced under a misapprehension. These rates, as we have seen, are just equal to the sums of the commodity rates from Chicago points to Memphis and the proportional rates from Memphis to destination. These joint rates, the carriers say, were established on the assumption that the proportional rates from Memphis were applicable on traffic originating in Chicago territory, whereas the application of the latter rates is expressly limited to traffic originating in the southeast. Furthermore the carriers urge that the 40-cent rate from Chicago to Memphis is abnormally low. A comparison of this rate even with other commodity rates applying east of the river demonstrates that it produces lower ton-mile earnings than any other rate on knitting-factory products that has been called to our attention. The carriers insist that while there are published through rates on these products from points east to points west of the river lower than the through first-class rates, these are due solely to the commodity rates applying east of the river which enter into the through rates. The through rates now in question from Chicago territory and from the southeast to these Arkansas points, it is urged, are the only ones in which the factor west of the river is less

than the first-class rate except in the case of through rates from Virginia, Carolina, and Atlantic seaboard points which have resulted from water competition. The objectors reply that while it is true that rates on knitting-factory products from points east to points west of the river are commonly first-class rates made on the differential basis over St. Louis or combinations of which the factor west of the river is the first-class rate, yet the through rates now in question are by no means anomalous, and as evidence of this they point to the large number of "miscellaneous commodity rates" which are exceptions to the class differential basis.

The second proposition relied on by the carriers as justification for making these advances from Chicago territory is that the present relation of rates is *prima facie* unlawful, and as between two alternatives for correcting the situation they have chosen the one which would not reduce their revenues and would be, they allege, most in harmony with the general rate structure. Before deciding on the proposed advances they state that they carefully considered the plan of so reducing the rates from St. Louis that the fourth section violation would be removed and a relation of rates satisfactory to the St. Louis jobbers established. This plan they found objectionable because the rates from St. Louis are basing rates from all defined territories, so that a reduction of these rates would involve the reduction of a large number of other rates based on them. This, the carriers insist, would cause a reduction in revenue which, in view of their present financial condition, they can not afford to make. Furthermore, it is urged that if the rates on knitting-factory products from St. Louis to the Arkansas points in question were reduced below first class this would be another departure from the almost uniform practice of charging first-class rates on these products west of the river, and would give other points throughout southwestern and western trunk line territories the right to demand similar commodity rates. If commodity rates were accorded to other southwestern points, then it is pointed out, Little Rock and Fort Smith would be worse off than under the proposed rates which permit Little Rock and Fort Smith to retain part of their present advantage, since the advanced rates are somewhat lower than the through first-class rates applying to other southwestern points. Accordingly, in consideration of the interests of Fort Smith and Little Rock, as well as of their own interests, the carriers say, they decided that reduction of the rates from St. Louis was inadvisable.

The only course remaining was to advance the rates from Chicago territory to the Arkansas points in question. The normal manner of doing this would be to put these rates on the usual class differential basis, that is, make them 20 cents higher than the first-class rates from St. Louis. But this basis was not feasible on account of the low

commodity rate of 40 cents from Chicago to Memphis which, added to the first-class rate from Memphis, would make a lower combination than the class differential applying through St. Louis. Therefore in order to encourage the movement of this traffic through the St. Louis gateway it was necessary to make the through rate from Chicago to Little Rock on the Memphis combination and to make the rate to Fort Smith 10 cents higher. These advances, it is said, bring the rates from Chicago territory as much into harmony with the general rate structure as possible and correct the violation of the third and fourth sections by making the rates from Chicago territory higher than those from St. Louis.

The justification offered for making the proposed advances in the through rates from the southeast by canceling the proportional rates from Memphis is that these proportional rates should never have been applied on traffic from the southeast. They were originally introduced under the stress of water competition, to apply on traffic from Virginia, the Carolinas, and Atlantic seaboard points, but water competition did not affect the rates from the southeast and no reason is known why these low rates were ever applied on traffic from this territory. The usual basis of making rates from southeastern points is by a differential over St. Louis or by combination on Memphis, and since knitting-factory products almost without exception move on first-class rates west of the river the normal practice would be for these commodities from the southeast to move to Little Rock and Fort Smith on the first-class differential rates if applicable or, if not, then on combinations in which the factor west of the river would be the first-class rate. To pursue any other course, the carriers urge, is to discriminate in favor of Fort Smith and Little Rock and against all other points in southwestern territory.

Furthermore, it is evident that if the advances proposed from Chicago territory are to be allowed these advances from the southeast are necessary to maintain so far as possible the existing relation of rates from producing points in these competing territories.

The proposed advances from Chicago territory and also those from southeastern points are objected to by the jobbing interests of Fort Smith and Little Rock. They urge that the proposed rates should be considered especially as regards their effect on Fort Smith and Little Rock as distributing centers competing with St. Louis and Memphis. These objectors filed extensive exhibits showing that the sums of the present rates applying from Chicago and southeastern territory to Fort Smith and the first-class rates from Fort Smith to many consuming points in Oklahoma and Arkansas are no greater than the sums of the rates from the producing points to St. Louis and Memphis and the rates from these distributing points to the

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same points of consumption in Oklahoma and Arkansas. If the proposed advances become effective, however, as these exhibits show, this parity of markets will be disturbed and Fort Smith dealers will be less able to compete in the sale of these products at many points at which they can now compete. The carriers reply that discrimination against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates on such distributing point exceeds the combination on a competitive distributing point. This proposition was announced by the Commission in *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 23 I. C. C., 195. In passing, however, it should be observed that the case now before us presents a different situation from that considered by the Commission in the case cited. We are not now dealing with a formal complaint based upon discrimination and asking that the Commission change existing rates. Here the carriers are proposing advances which it is alleged will disturb established competitive conditions. The law has placed upon them the burden of justifying such advances. Manifestly evidence tending to show that any community will be injuriously affected by such advances should be weighed against whatever justification the carriers may offer for making them.

Objection to the proposed advances from Chicago territory has also been made by the manufacturers of Rockford, Ill., who allege that the advanced rates will discriminate against Rockford and in favor of manufacturers in Virginia and the Carolinas, who will still have through rates based on the proportional rates now applying from Memphis. These objectors presented little evidence at the hearing. In their brief it is urged that there is no reason why the rates from Memphis to Little Rock and Fort Smith should not be as low on the traffic from Chicago territory as from seaboard territory. It is clear, however, that rates from seaboard territory are forced by competitive conditions which do not affect the rates applying from Chicago territory. In making the proposed advances, as we have seen, the carriers have endeavored to maintain the existing relation of rates applying from the producing points involved, and, so far as the present record discloses, none of these points can justly complain of undue discrimination.

The carriers, we believe, have fairly established that the rates which they now seek to advance are exceptions to the prevailing system of rates applying on knitting-factory products from points east to points west of the Mississippi River. The effect of applying these exceptional rates is a violation of the fourth section of the act and a discrimination against numerous distributing points west of the river. The representatives of Fort Smith and Little Rock have suggested no reason why these communities should have a lower basis of rates on knitting-factory products from the river and points east

thereof than are applied to other points west of the river, except that they have enjoyed such rates during the past three years, and by means of them have developed markets from which they would be excluded by the advances proposed. It is obvious, however, that to the extent that jobbers in Little Rock and Fort Smith have been enabled to extend their trade solely by reason of preferences in rates such preferences should be removed rather than continued.

It is clear from the record that the requirements of the law demand that some change be made in existing rates. In order to correct violations of the fourth section the carriers must either reduce certain rates, and thereby bring about further departures from the established rate structure, or they must advance the rates in question. Under all the circumstances we conclude that the advances proposed from Chicago territory and from the southeast to Little Rock, Fort Smith, and the other Arkansas points in question are justified. An order will be entered vacating the suspension.

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INVESTIGATION AND SUSPENSION DOCKET No. 79.
CLASSIFICATION OF EMPTY BARRELS.

Submitted November 18, 1912. Decided January 7, 1913.

Advance objected to is change in the rating of empty tight cooperage barrels in carloads in southern classification from sixth to fifth class; *Held*, That the carriers have justified proposed advance, and order of suspension will be vacated.

Harold R. Small for Pioneer Cooperage Company, St. Louis Cooperage Company, Southern Cooperage Company, Union Cooperage Company, National Cooperage Association, and Chickasaw Cooperage Company.

Joseph S. Davant for Memphis Freight Bureau.

A. F. Versen for Business Men's League of St. Louis.

R. Walton Moore and *Frank W. Gwathmey* for Illinois Central Railroad Company; Southern Railway Company; Mobile & Ohio Railroad Company; Louisville & Nashville Railroad Company; and other associated southeastern carriers.

Henry G. Herbel and *Fred G. Wright* for Missouri Pacific Railway Company; International & Great Northern Railway Company; St. Louis, Iron Mountain & Southern Railway Company; and Texas & Pacific Railway Company.

E. K. Bryan, jr., for Illinois Central Railroad Company and Yazoo & Mississippi Valley Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Changes in schedules in the southern classification relating to empty barrels are the subject of this investigation. Since 1902 this classification has placed tight cooperage barrels, beer barrels, and barrels, n. o. s., in carloads in the sixth class. The rating on beer barrels applied to any quantity and the rating on tight cooperage barrels and barrels, n. o. s., applied only with a minimum weight of 10,000 pounds. Tight cooperage less than carloads has been fourth class. By supplement 19 to southern classification No. 38 it was proposed to change the rating on tight cooperage barrels, beer barrels, and barrels, n. o. s., in carloads from sixth to fifth class and to advance the minimum weight on tight cooperage barrels from 10,000

to 12,000 pounds. Further, it was proposed to advance the rating on tight cooperage barrels in less than carloads from fourth to third class. These advances were suspended pending this investigation.

At the hearing only one shipper objected to the advance on beer barrels, and he admitted that his firm had shipped none of these into the southeast for eight years. The rating on this commodity is of little practical importance because it applies only to new barrels, since the rates on returned empties are made in connection with the commodities they carry. Furthermore, no objection was made to the advance in rating on tight cooperage barrels in less than carloads, presumably because shipment in carloads is the usual practice. Finally, no objection was made to the advance in the minimum weight on tight cooperage barrels from 10,000 to 12,000. All of the objectors admitted that the standard car would hold over 12,000 pounds of barrels and that the actual loading averaged as high as the minimum weight proposed. The only part of the suspended schedules, therefore, which is seriously objected to is that advancing the rating on tight cooperage barrels and barrels, n. o. s., from sixth class to fifth class.

The justification of the carriers is based primarily on the contention that the earnings per car under the present rating are so low that barrels are not paying their proper share of the operating cost.

Exhibits were filed to show that under the present rating and minimum weight barrels produced much lower earnings per car than the few other light and bulky articles in sixth class, and that even the proposed rating and minimum weight would produce low earnings per car as compared with such articles in fifth class, owing to the small revenue-earning tonnage per car. The chairman of the southern classification committee stated that he had been able to find but one other commodity furnishing such small revenue-earning tonnage per car that took a rating as low as sixth class, and that one had been influenced by the rating on barrels. Light and bulky articles, to which class barrels belong, almost invariably, it was stated, are in a higher class, and if weight alone were considered barrels should be put in third class. This witness stated that in the southern classification the sixth class contained about 335 carload ratings, and of these only 15 had a lower minimum weight than 20,000 pounds, about 30 a minimum weight of 20,000 pounds, and the remainder a minimum weight of over 20,000 pounds, whereas the proposed minimum weight on barrels was only 12,000 pounds. In fifth class there are only 35 commodities having a minimum weight as low as 15,000 pounds, and the average loading of articles in fifth class is about 30,000 pounds.

The carriers further contend that the present rating and minimum weight in southern classification is low as compared with the other

classifications. In official classification tight cooperage barrels in carloads, with a minimum weight of 12,000 pounds, were rated fifth class up to April 1, 1910. On that date the rating was advanced to fourth class. In western classification they were rated class D, with a minimum weight of 14,000 pounds up to July, 1908, when the rating was advanced to class B, the minimum weight remaining the same. It was objected that since the whole classification scheme differs in the three territories no comparison of classes was possible. The carriers, however, insist that since the southern classification has 7 graded classes and the official classification has 8, if rules 26 and 27 are counted, it is fair to compare class 5 of the southern classification with class 4 of the official. On this basis of comparison the proposed fifth-class rating appears just and in the direction of uniformity. Furthermore, it is said the minimum weights in the different territories can, of course, be compared, and it will be seen that the minimum weight in western is 2,000 pounds higher than that proposed in southern classification. Finally it is in evidence that while the rating has recently been advanced in official and western classifications the present rating in southern classification has remained unchanged for 10 years. Much evidence was introduced to show that in several particulars conditions had so changed since the present rating was adopted as to warrant the advance proposed.

The objectors consist of four cooperage concerns located at St. Louis and one at Memphis. There are local cooperage plants scattered throughout the south. There are also large cooperage firms located at St. Louis, Mo., Memphis, Tenn., Richmond, Va., Cincinnati, Ohio, Louisville and Paducah, Ky., which ship into the southeast. The only objection to the proposed advance, however, comes from the concerns at St. Louis and Memphis. The company at Memphis, it appeared, makes no shipments into the southeast except to Pensacola, Fla., and Mobile, Ala., and these are under commodity rates. It was therefore admitted at the hearing that this firm had no direct interest in the advance now in question and it appeared solely because it feared that an advance in any of the barrel rates in this territory might ultimately affect its rates. The firms located at St. Louis, however, have substantial interests at stake. These companies have in recent years developed a considerable trade in barrels at certain points in the south, particularly Atlanta, Ga. They object to the advance in the rating on tight cooperage barrels not only because the resulting increase in the cost of transportation will make it more difficult to compete with the local plants in the southeast but because the rate structure is such that the change in the classification will result in a greater relative advance from St. Louis than from competing points into the southeast. For example, the present

sixth-class rate from St. Louis to Atlanta is 49 cents, from Cincinnati, Louisville and Paducah 41 cents, and from Richmond 37 cents, while the fifth-class rate from St. Louis is 62 cents, from the Ohio River points 52 cents, and from Richmond 41 cents. Thus not only are the rates advanced but the differential of St. Louis over the Ohio River points is increased from 8 to 10 cents and the differential of St. Louis over Richmond is increased from 12 to 21 cents. This fact, it is declared, will have the effect of destroying the trade which the St. Louis firms have developed in the southeast. The objectors practically concede that the present earnings per car on barrels are unduly low. Their contention simply is that the method of making the advance discriminates against St. Louis. In their brief it is urged that if an advance is to be made they would have no objection to an increase in the carload minimum weight to 15,000 pounds. Such an advance, it is urged, would produce the increased earnings per car desired and would be fair to all points.

We have before us simply a question of classification. From the whole record we conclude that a change in the classification designed to increase the earnings on barrels per car is fully warranted. We do not believe that the suggestion of the St. Louis interests that this advance be made by increasing the carload minimum weight to 15,000 pounds would be just, because it is clear from the record that this minimum weight is in excess of the maximum loading possible in a standard car. While the large manufacturing plants at St. Louis and other points might not object to such a solution of the matter, it would clearly be unfair to the large number of local plants scattered through the south to require them to pay for a greater weight than they could ship in a standard car, and it would be even more unfair to the carrier to force them to apply a minimum weight that would lead shippers to take frequent advantage of the two-for-one rule. The suspended schedules will therefore be permitted to go into effect.

25 I. C. C.

No. 4801.

ARKANSAS FERTILIZER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted October 15, 1912. Decided January 7, 1913.

Complainant manufactures commercial fertilizers at Little Rock, Ark., using among other ingredients kainit, or other potash salts, and nitrate of soda. Potash salts come from Germany and nitrate of soda from Chile, the ports of entry being on the Atlantic and Gulf coasts. Complainant receives the major portion of its shipments through New Orleans, La., and alleges that the rates charged by the defendants for the transportation of nitrate of soda and potash salts from New Orleans to Little Rock are unreasonable, unjustly discriminatory, and subject it and the latter place to undue prejudice and disadvantage as compared with the rates on the same commodities from New Orleans to Memphis. The record discloses that the rates under investigation apply from other Gulf ports as well as from New Orleans and via many routes; and that the rates to Memphis are lower than they otherwise would be by reason of actual and potential water competition, and by reason of the location of Memphis as a Mississippi River gateway. Upon all the facts shown, *Held*:

1. That the rates on nitrate of soda and potash salts from New Orleans, La., to Little Rock, Ark., are not unreasonable or excessive.
2. That they do not produce unjust discrimination, or subject Little Rock or the complainant to undue prejudice and disadvantage as compared with the rates to Memphis.
3. That the complaint should be dismissed.

Murphy & McHaney for complainant.

Henry G. Herbel, Fred G. Wright, and B. M. Flippin for St. Louis, Iron Mountain & Southern Railway Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

Henry G. Herbel, Fred G. Wright and E. L. Sargent for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This case brings in issue the rates on nitrate of soda and potash salts from New Orleans, La., to Little Rock, Ark.

Complainant is a corporation engaged in the manufacture and sale of commercial fertilizers at Little Rock; it receives fertilizer materials

from New Orleans, for the transportation of which the defendants charge 20 cents per 100 pounds on nitrate of soda and 14½ cents on potash salts, including thereunder chlorate, muriate, and sulphate of potash, manure salts, Hardt salts, and the crude material known as kainit. Shipments received within the period of two years preceding the filing of the petition, April 16, 1912, are specified and reparation is demanded thereon, based upon allegations that the rates charged were and are unjust, excessive, and unreasonable, in and to the extent that they did and do exceed rates of 15 cents on nitrate of soda and 12½ cents on potash salts; that unjust discrimination is created by these rates as compared with the lower rates on the same commodities to Memphis, Tenn.; and that these rates subject Little Rock and the manufacturers of fertilizer at that place to undue prejudice and disadvantage as compared with Memphis, where the rates are 13 cents per 100 pounds on nitrate of soda and 10 cents on certain potash salts.

Commercial fertilizers are composed of various ingredients and are of different grades. Complainant's standard grade sells at a delivered price of \$21 per ton; it contains 1,200 pounds of acid phosphate, 500 pounds of cottonseed meal and 300 pounds of kainit, these materials producing a mixture which has 9 per cent of phosphoric acid, 2 per cent of ammonia, and 2 per cent of potash. Higher grades of fertilizer have nitrate of soda, tankage, muriate of potash, or other plant foods adapted for special purposes. The average selling price of all grades of complainant's products is about \$20 per ton.

As developed at the hearing, complainant's grievance appears to be the apparent discrimination in rates as between Memphis and Little Rock, and the testimony indicates that the competition between complainant and the fertilizer factories at Memphis is mainly in the standard grade of fertilizer above described. Complainant compares the rates from New Orleans to Little Rock with the rates from the same place to Memphis, and, taking the short-line mileages to Memphis and to Little Rock, compares the revenues per ton per mile received on these commodities by the defendants and says that the higher ton-mile rates applied at Little Rock are unreasonable and discriminatory. Comparison is also made between rates on these specific commodities from New Orleans to Memphis and to Little Rock, plus the rates on the finished product from Memphis and from Little Rock to Arkansas points of distribution, for the purpose of showing undue prejudice and disadvantage to Little Rock.

The rates on fertilizers from Memphis to points in Arkansas were made by this Commission on the petition of complainant's chief competitor at Memphis, *Virginia-Carolina Chemical Co. v. St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 1, and *Same v. C., R. I. & P. Ry. Co.*, 18 I.

C. C., 3, and the rates from Little Rock to the same places are made under what is known as the "Arkansas Court tariff," over which we have no jurisdiction for the reason that they are intrastate rates. However, the sum of the rates into Memphis and Little Rock on potash salts and nitrate of soda, plus the outbound rates on commercial fertilizers from these places to Arkansas destinations, can not be compared in this manner because less than one-sixth of the outbound product consists of potash salts and nitrate of soda.

It appears that all the nitrate of soda used in this country comes from Chile, and that so much of this commodity as is consumed at points on or east of the Missouri River comes through the Gulf or Atlantic ports. The rates to Kansas City and to points in Kansas, Missouri, Oklahoma, Arkansas, and Tennessee are the same, whether this commodity moves through Pensacola, Mobile, New Orleans, or Galveston, the carriers equalizing rates from the Gulf ports to Memphis, Little Rock, and to points beyond. Generally speaking, little or no nitrate of soda is used in the manufacture of standard or lower grades of fertilizer, but it is sometimes used as a fertilizer by itself and frequently enters into commercial mixtures of the higher grades, such as are demanded for trucking or similar purposes. Heretofore most of the nitrate of soda imported into this country has been used in the manufacture of powder; but in recent years this commodity has grown in favor for agricultural purposes, and whether the greater bulk of it is now used as a fertilizer or as a constituent of black powder does not appear. Rates on this commodity from the Gulf ports to Fort Smith were considered by this Commission in *Fort Smith Traffic Bureau v. St. L. & S. F. R. R. Co.*, 13 I. C. C., 651, in which case it appeared that the carriers concurrently maintained two rates upon nitrate of soda, one when for use as fertilizer and one without restriction as to use, and the rate based upon the use to which the commodity might be put was condemned. When nitrate of soda is used at all in standard or lower grades of commercial fertilizer, only small quantities are employed, because of its high cost and large percentage of nitrogen. Its value at the port of New Orleans has been between \$40 and \$50 per ton during recent years, and complainant paid \$49 per ton recently.

The rates on nitrate of soda from the Gulf ports to Kansas City and related points are 29 and 30 cents per 100 pounds. The rate to South McAlester, Okla., is 29 cents and to Fenn and Fort Smith, Ark., 27 cents. Apparently these rates are adjusted with some reference to the rates on the same commodity from the Atlantic Seaboard, and taking into consideration the value of that commodity and the adjustment of rates in western territory we do not feel justified in condemning the rate of 20 cents per 100 pounds from New Orleans, La., to Little Rock as unreasonable. Complainant insists, however, that the

rate of 20 cents is unreasonable, measured by the rate of 13 cents which applies at Memphis; that the discrimination shown between Memphis and Little Rock by the defendants is unjust; and that Little Rock is subjected to undue prejudice and disadvantage by these rates. The short-line distance from New Orleans to Memphis is 396 miles and to Little Rock is 456 miles; the complainant, however, insists that there is an average distance by the shorter lines of 426 miles between New Orleans and Memphis and a similar average of 473 miles between New Orleans and Little Rock. These distances or average distances, however, are not particularly helpful in making the comparisons desired by the complainant, for the traffic while moving generally through New Orleans may and does move under the tariffs from any of the Gulf ports above named and at the same rates. Taking the complainant's own statement, however, the rate per ton per mile is about 8.5 mills on nitrate of soda and 6.12 mills on the various potash salts between New Orleans and Little Rock, as compared with ton-mile earnings between New Orleans and Memphis of 6.1 mills on nitrate of soda and 4.7 mills on potash salts. The actual ton-mile earnings of the defendants via the routes over which complainant's shipments moved were less than the figures indicated above.

Complainant has a capacity of from 30,000 tons to 36,000 tons per year, and actually markets from 15,000 tons to 20,000 tons per year. It uses kainit, Hardt salts, and muriate of potash, in the order named. Kainit is worth at the ports about \$8, Hardt salts about \$12, and muriate of potash from \$40 to \$45 per ton.

Rates east and west of the Mississippi River are not generally susceptible of direct comparison, nor do they ordinarily show the same revenues per ton per mile. Certainly, rates between Mississippi River gateways, such as New Orleans and Memphis, where competition between rail carriers is intensified; if not by actual then by potential water competition, can not be used as the measures of reasonableness of rates to interior points, such as Little Rock, west of the Mississippi River. The complainant recognized that something higher than the Memphis rate should be charged at Little Rock, and did not ask for the Memphis adjustment on these commodities, but asked for rates 2 and 2½ cents higher than those obtaining at Memphis. Little Rock is upon the Arkansas River, and transportation by water between Memphis and Little Rock is possible for many months during the year, perhaps during the major portion of the year. At the hearing of this case at Little Rock the testimony indicated that the boats had recently ceased running between Little Rock and Memphis, not for lack of water but for lack of cargoes, and the evidence in behalf of complainant was to the effect that

even with the lower water rates it was more economical to ship by rail because of the nearer delivery to the plant.

Upon all the circumstances and conditions shown in this record we are not convinced that the rates involved are unreasonable or unjustly discriminatory. It follows that the case must be dismissed, and it will be so ordered.

Some intimation was given at the hearing that the carriers had under consideration an increase in the rate on potash salts and fertilizer materials from 14½ cents to 16 cents, 16 cents being the present commodity rate on fertilizers between New Orleans and Little Rock. While the present record does not justify us in condemning either the rate on nitrate of soda or upon potash salts, we think it proper to state that this report is not to be understood as sanctioning any advance in the rates in question.

25 I. C. C.

No. 4500.
PRESTON L. HILL
v.
PENNSYLVANIA RAILROAD COMPANY ET AL.

Submitted November 7, 1912. Decided January 7, 1913.

Carrier's tariff did not provide for adjustment of charges on a "punch-cancellation" commutation ticket lost by the owner, but such ticket was subject to conditions which would not entitle him to receive redemption money on account of loss; *Held*, That the failure of defendants to provide in their tariffs for the payment of redemption money on account of lost and unrecovered commutation ticket of the "punch-cancellation" variety was not unreasonable. Reparation denied.

John G. Kaufman for complainant.

Henry Wolf Bickel for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a real estate broker with place of business in Philadelphia, Pa. By petition, filed October 18, 1911, he alleges that he has been subjected to unjust and unreasonable fares and also to undue prejudice and disadvantage by reason of defendants' unlawfully withholding from him a refund, or by their failure to render him service on the remaining portion of a lost commutation ticket issued for transportation in his behalf between Philadelphia, Pa., and Atlantic City, N. J. Reparation is sought.

The petition was brought against the Pennsylvania Railroad Company, but by amendment the West Jersey & Seashore Railroad Company was made an additional party defendant. The latter carrier is operated by and as a part of the Pennsylvania Railroad system, and extends between the points above named.

On May 1, 1909, complainant purchased of the defendants in Philadelphia a 150-trip annual commutation ticket (No. 1101), good for transportation, via the West Jersey & Seashore Railroad, between Market street wharf, Philadelphia, and Atlantic City, for which he paid \$75. Complainant used the ticket throughout the months of May, June, and July, and the first part of August of that year. It is stated by complainant that he lost said ticket on August 13, 1909, and immediately thereafter notified defendants of that fact. The

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actual number of rides made on the ticket prior to its loss is not definitely known. Complainant testified that according to his recollection he had used 44 or 45 rides, but he was certain he could not have used more than 50 rides. At complainant's request, the ticket in question was "outlawed" on August 25, 1909, by defendants. Conductors and ticket examiners were notified accordingly. The ticket was never found nor presented to the defendants so far as appears.

Complainant submitted in evidence a sample of the ticket lost. It is of the "punch-cancellation" variety, measuring about $2\frac{1}{2}$ by 12 inches, folding between a cardboard cover. On the face of the ticket there are printed 150 small spaces about $\frac{1}{4}$ of an inch square, each containing a numerical punch mark, the numbers running from 1 to 150. On the back thereof appears a printed contract which the purchaser is required to sign before the ticket is valid. The conditions of the contract material in this case are as follows:

1st. That it is good for the exclusive use of the purchaser and will be forfeited if presented by any other person than myself.

9th. That I have no claim for rebate on account of the nonuse of the ticket from any cause.

10th. That it is to be presented to conductor upon each trip for proper cancellation, and is to be surrendered to him on the last trip taken during the period for which it is issued.

Attached to the bottom of the ticket is a coupon or audit check good for the first trip upon the cancellation of the first numerical punch mark.

Complainant did not purchase another ticket of the same character, but avers that he made 106 trips between the same points during the time from the date of outlaw to the date of expiration of the lost ticket, paying a higher rate of transportation. Complainant cites the case of *Moore v. N. Y. & L. B. R. R. Co.*, 20 I. C. C., 557, as containing a holding respecting the redemption of lost tickets which should govern in this case. In that case the commutation ticket under consideration was of the "coupon" variety. A "coupon commutation" ticket contains coupons each bearing the number of the ticket, one of which is to be detached by the conductor for each ride taken and forwarded by him to the auditing department. The carrier, therefore, has a check on each ride taken by the holder thereof. On the other hand, in the case of a ticket of the "punch-cancellation" variety, the number of the ride is punched out and the ticket returned to the holder. No report or audit is made except for the first and last rides; i. e., the first ride by the audit check and the last by the surrender of the ticket with all rides punched.

There is protection afforded a carrier in the use of the "coupon" ticket in the way of checking rides taken thereon which does not

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exist in the use of a "punch-cancellation" ticket. It was because the railroad company, through the taking up of coupons, was able to ascertain the number of rides that had actually been taken, even though the lost ticket was not recovered, that the Commission concluded in the *Moore case, supra*, that the provision in the carrier's tariff was unduly discriminatory, and that to refuse to make adjustment for the unused part of such a ticket was unreasonable, but the action taken in that case is not controlling here because of the difference in the form of ticket.

It is clear that to allow redemption on alleged lost and unrecovered "punch-cancellation" commutation tickets would open opportunities and afford ready means for violations of the law and the perpetration of fraud.

Upon consideration of all the facts and circumstances of record we find that the failure of the defendants to provide in their tariffs for the payment of redemption money on account of alleged lost and unrecovered commutation tickets of the kind in question was not unreasonable, and the complaint will therefore be dismissed.

25 I. C. C.

No. 4630.

PHILADELPHIA VENEER & LUMBER COMPANY, INCORPORATED,

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY ET AL.

Submitted June 3, 1912. Decided January 7, 1913.

Rates of 31 cents per 100 pounds, all-rail, and 29 cents per 100 pounds, rail-and-water, for the transportation of imported Spanish cedar logs from New York, N. Y., to Knoxville, Tenn., not found unreasonable or unduly discriminatory. Complaint dismissed.

Eugene M. Henoyer for complainant.

R. Walton Moore and *Frank W. Gwathmey* for Richmond, Fredericksburg & Potomac Railroad Company; Atlantic Coast Line Railroad Company; Norfolk & Western Railway Company; and Southern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation and was engaged at the date its complaint was filed, January 15, 1912, in the manufacture of veneered cedar cigar-box lumber at Knoxville, Tenn. It is alleged in its complaint that defendants' all-rail rate of 31 cents per 100 pounds and rail-and-water rate of 29 cents per 100 pounds for the transportation of imported cedar logs from New York, N. Y., to Knoxville were unreasonable and discriminatory. Reparation is asked.

Subsequently to the filing of its petition complainant closed its manufacturing plant at Knoxville and there is now no one using imported logs at that point.

During the period from April 15, 1910, to September 9, 1911, complainant shipped 38 carloads of imported Spanish cedar logs from New York to Knoxville. The product was shipped out from its plant as cigar-box lumber in bundles. This lumber was made of poplar five thirty-seconds inch in thickness, with a cedar veneer one one-hundred-and-twentieth inch in thickness.

The short-line all-rail distance from New York to Knoxville is 736 miles, via Washington, D. C., Lynchburg, Va., Norfolk & Western Railway to Bristol, Va., and Southern Railway to destination. The distance via the Pennsylvania lines to Harrisburg, Pa., Cumberland

Valley to Hagerstown, Md., Norfolk & Western to Bristol, Va., and Southern Railway to Knoxville, is 790 miles. From New York to Cincinnati, Ohio, the distance is 758 miles, and the rate on imported cedar logs to the latter point is 20 cents per 100 pounds. The all-rail rate from New York to Knoxville yields 8.4 mills per ton per mile and the rate to Cincinnati 5.2 mills. The logs shipped in this case ranged in value from \$80 to \$120 per 1,000 feet. The evidence shows that in addition to logs imported directly to Cincinnati, manufacturing concerns in the latter place buy largely from Louisville, Indianapolis, and other points and appear to have handled a much heavier volume of traffic than Knoxville. However, there is no definite statement in the record of the volume of traffic or of the conditions under which the rate of 20 cents to Cincinnati is maintained.

Complainant further contends that it was entitled to a rate on the same mileage basis as Indianapolis or Louisville. To these points the haul from New York is through trunk line and central freight association territories where there is greater density of traffic, a predominance of thickly populated areas, and more competing lines. The circumstances and conditions of transportation from New York to Cincinnati, Indianapolis and Louisville are not substantially similar to the conditions obtaining with respect of transportation of like traffic from New York to Knoxville.

Complainant also refers to the fact that there is a rate of 30 cents per 100 pounds on cedar flitches from New York to Johnson City, Tenn., 106 miles east of Knoxville. It is contended that this establishes the unreasonableness of the log rate to Knoxville. There is a plant at Johnson City, which also maintains a plant at New York, where imported cedar logs are cut into flitches, which are squares, to reduce the waste of the logs. The cutting demonstrates whether or not a log is suitable for veneers and enables the shipper to ship only the best logs. Flitches are estimated to be worth \$270 per 1,000 feet, against the log value of \$80 to \$120 per 1,000 feet. It appears, however, that the rate of 30 cents is the cedar log rate, which is applied to the cut logs in the absence of a specific rate on the higher-priced flitching. The rate complained of is also the log rate, which would likewise apply to flitches. An addition of one cent in the rate for an increased haul of 106 miles on this traffic is not to be regarded as excessive.

Defendants contend that the New York to Knoxville all-rail rate was established for the benefit of this complainant and was made the same as the northbound rate. Prior to the establishment of complainant's plant at Knoxville the rate had been the sixth-class rate of 40 cents. The Clyde Line, after the establishment of the 31-cent rate here in question, published a water-and-rail rate of 29 cents, based on the usual differential of 2 cents less than the all-rail rate.

The Clyde Line rate is still in effect. The usual adjustment of northbound rates on cedar lumber and logs is 3 cents higher than on common lumber and logs. In the case of the rate under consideration, however, the differential is $2\frac{1}{2}$ cents.

The commodity rate of 31 cents is 9 cents less than the sixth-class rate and is one cent less than the rate on imported mahogany logs, although the value of these cedar logs is in excess of the value of the latter. The class rates from New York to Cincinnati are, in cents per 100 pounds:

Class----	1	2	3	4	5	6
Rate-----	65	57	44	30	26	22

and the rates on the first six classes to Knoxville:

Class----	1	2	3	4	5	6
Rate-----	100	85	70	55	48	40

The class rates to Knoxville, it will be observed, are, on an average, 63 per cent higher than the rates to Cincinnati. The same ratio applied on cedar logs would result in a rate of 32.6 cents to Knoxville as compared with Cincinnati. The sixth-class rates, as shown above, applicable to this commodity in official classification and southern classification territories, are, respectively, 22 and 40 cents, or, applied to Knoxville as compared with Cincinnati, 81 per cent greater. The difference in the commodity rates on cedar logs is but 55 per cent.

In answer to complainant's contention that rates from the Gulf ports are, mile for mile, less than those from New York, the defendants assert that rates from the Gulf ports are made to meet competition with the rates from Baltimore and Newport News rather than New York. The lower basis of rates from the southern ports to Knoxville do not prove that the higher rates from New York are unreasonable. Lumber logs are commodities of low grade ordinarily affording a heavy tonnage and generally taking relatively low rates. But there is a wide range of values between common lumber and logs and woods of value, and no evidence appears in this record indicating that these facts had not been recognized in connection with the situation respecting the rates here involved.

We are of the opinion from all the facts in this record that the rates charged complainant have not been shown to be unreasonable or unduly discriminatory. An order dismissing the complaint will accordingly be entered.

25 I. C. C.

No. 4618.
ALFRED STRUCK COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted June 20, 1912. Decided January 7, 1913.

Interior house trimmings "in the white" as carried in southern classification held not to include trimmings which have been treated before shipment to a coat of priming or filler and a coat of shellac. Classification of interior house trimmings as applicable in southern classification not shown to be unreasonable.

Hines & Norman for complainant.

R. Walton Moore and *Chas. J. Rixey, jr.*, for Nashville, Chattanooga & St. Louis Railway.

William A. Northcutt, *William G. Dearing*, and *Albert S. Brandeis* for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation with principal offices at Louisville, Ky., does a general building and contracting business, and is a shipper of building material, including interior house trimmings. In its petition, filed January 11, 1912, it is alleged that defendants charged unreasonable rates for the transportation of certain shipments of interior house trimmings moving in January, February, and March, 1910, and January, February, and March, 1911, from Louisville, Ky., to Oklahoma City, Okla., and Chattanooga, Tenn.; in the prayer of the petition it asks that commodity rates on building material or interior house trimmings "in the white or in the rough" be applied to house trimmings when treated to a coat of priming or filler and a coat of shellac. Reparation is asked.

With respect to the shipments to Oklahoma City, it developed upon the hearing that the carriers had found that complainant had been overcharged, and it was shown that such overcharges have been refunded. These shipments, therefore, will not be further considered. The question presented is one of interpretation of the tariffs and classification applicable on shipments from Louisville to Chattanooga and other points in southeastern territory.

At the time the shipments in question moved, Washburn's I. C. C. No. 78 and the preceding issue thereof, to which the defendants were parties, governed by southern classification, named a commodity rate of 21 cents per 100 pounds on shipments of house trimmings from Louisville to Chattanooga, limited to material of the following description:

Building material, wooden, in the white or in the rough, viz: Lumber (rough or dressed), laths, shingles, scrollwork, window and door frames, sash (glazed or unglazed), doors (glazed or unglazed), blinds (glazed or unglazed), carpenters' molding, balusters, baseboards, casings, porch columns, newels, stair work, and wainscoting, straight or mixed carloads (except on straight carloads of lumber, laths, shingles, carpenters' molding, casing, and baseboards), minimum weight 30,000 pounds.

Rule 18 of the southern classification, in effect at the same time, provided as follows:

(a) The term "in the rough" applies to such articles when sawed, hewn, planed, or bent, and before any further manufacturing process has begun.

(b) The term "in the white" applies after the manufacturing process has begun (and may include one coat of priming), but when the article has not been painted or varnished.

(c) The term "finished" applies to the article after it has passed the stage of manufacture covered by sections (a) and (b) of this rule.

Southern classification also provides for sixth-class rating on the following:

Building material, wooden, consisting of rough or dressed lumber, laths, shingles, window and door frames, sash, doors and blinds, columns, bases and capitals, moldings, balusters, baseboards, casings, newel posts, stair work, and wainscoting, mixed c. l.

with a minimum of 24,000; and each of the items so included is separately classified, without reference to the finish, fourth class in less than carloads and sixth class in carloads, except that moldings are classified—

Moldings, viz:

	Class.
Wooden, finished, packed or in bundles, l. c. l.-----	2
Same, c. l.-----	4
Wooden, unfinished, or in the white, loose or packed, l. c. l.-----	4
Same, c. l.-----	6
N. o. s.-----	1

The class rates Louisville to Chattanooga are—

Class-----	1	2	3	4	5	6
Rate-----	70	60	53	44	38	29

January 26, 1911, complainant made one full carload shipment of house trimmings to Chattanooga, which weighed 26,600 pounds. On this shipment charges were collected on the basis of the sixth-class rate of 29 cents and minimum weight of 30,000 pounds. The minimum weight provided in the tariff for sixth-class was 24,000 pounds.

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The charges therefore should have been computed on the actual weight, and on this shipment there was an overcharge of \$9.85. The remaining shipments in respect of which complainant seeks reparation consisted of various less-than-carload shipments of molding, sash, doors, frames, and house trimmings. In view of the disposition of this case it is not necessary to go further into detail with respect to the payments that were made on such shipments.

The material here under consideration which was transported from Louisville to Chattanooga was treated before shipment to one coat of filler or priming and one coat of shellac. It is complainant's contention that such shipments should be construed to be shipped "in the white" and be charged the commodity rates provided in Washburn's tariff instead of class rates. Shipments of house trimmings treated before shipment to one coat of priming or filler and one coat of shellac do not come within the descriptive terms of the tariff and classification respecting shipments "in the white." Shellac is a kind of varnish, and moldings, frames, etc., treated to a coat of this material in addition to a coat of priming are more nearly finished than if they had merely been subjected to priming or a filler coat. Our conclusion is that the shipments involved were properly charged at the rates provided for finished material.

Some question is raised by complainant as to the reasonableness of the tariffs which provide for higher rates on house trimmings treated as the material here in question was treated than is applied to shipments in the white or in the rough, but the evidence shows that house trimmings treated to a coat of shellac in addition to one of priming or filler are of greater value and a more nearly finished product than the same material treated only to a coat of priming. Upon the record we are unable to find that the charges assessed upon the shipments in question—except as above noted—were unreasonable.

We further find that complainant, on January 26, 1911, made a carload shipment of house trimmings from Louisville, Ky., to Chattanooga, Tenn., as hereinbefore described, and paid the charges thereon as hereinbefore set forth, and that it has been damaged in the amount of the difference between the charges it did pay and the amount it would have paid had the lawful charges been exacted, and is entitled to an award of reparation from the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway in the sum of \$9.85, with interest from January 31, 1911. An order will be entered accordingly.

25 I. C. C.

No. 4613.
PORTNER BREWING COMPANY
v.
SOUTHERN RAILWAY COMPANY.

Submitted July 11, 1912. Decided January 7, 1913.

The assembling of empty packages at one point, when the filled packages were shipped to several points, in order to obtain sufficient for return carload shipments, is contrary to rule of southern classification. Returned empty-package rate applies only from and to the points between which the original shipment moved.

T. R. Fitzgerald and John J. McDonnell for complainant.
C. B. Northrop and Alex. M. Bull for defendant.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainant, a corporation with principal place of business at Alexandria, Va., by petition, filed January 8, 1912, alleges that it has been charged unreasonable rates for the transportation of returned empty beer packages from Charlotte, N. C., to Alexandria. Reparation is asked.

On February 18, May 8, June 7, and August 9, 1911, respectively, complainant shipped a carload of returned empty packages from Charlotte to Alexandria. The aggregate weight of these shipments was 104,200 pounds, for which transportation charges in the sum of \$437.64, based on a rate of 42 cents per 100 pounds, were paid by complainant. At the time these shipments moved the rate on beer, Alexandria to Charlotte, was 37 cents and the return rate on empty containers was governed by southern classification which provides the following as a basis for fixing rates on returned empty beer packages:

Ale and beer packages, empty, returned, consisting of bbls., 1/2 bbls., and kegs, and bottles, in wooden, wire or sheet metal cases, barrels, or casks * * *. L. c. l., same rate as applies on beer, c. l., in same class of package in the reverse direction. Same c. l. min. wt. 10,000 pounds, one-half rate applying on beer, c. l., in the same class of package, in the reverse direction.

The record in this case shows that complainant employed an agent at Charlotte. His territory, included many points outside of Charlotte in various directions, within a radius of 50 or 60 miles thereof.

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Orders were sent in by the agent to complainant's brewery at Alexandria, and shipments were made direct to customers or consignees ordering the goods in Charlotte or other adjacent points, with instructions to return the empties to their agent at Charlotte. The agent would then consolidate the empty packages in Charlotte, moving thereto from various points in less-than-carload lots. When a carload quantity had been accumulated he would forward same as returned empties from Charlotte to Alexandria. This custom had been in existence 10 or 12 years. During 1911 defendant's attention was called to the use of the carload returned empty rate by complainant from Charlotte on these consolidated shipments. It was determined that the practice of applying the return-empties rate to consolidated shipments of this character was a violation of the tariff.

The only question in this case is the proper application of southern classification rule governing this traffic. The consolidation of empty packages at Charlotte, when the filled packages were shipped to various other points, and the attempt to ship them at the returned empty rate from Charlotte does not accord with the tariff and is therefore unlawful.

Upon consideration of the record we are of opinion and find that the charges complained of were assessed in accordance with tariff provisions, which have not been shown to be unreasonable, and complaint will therefore be dismissed.

25 I. C. C.

No. 4582.

IRVIN KIBBE

v.

ST. LOUIS, BROWNSVILLE & MEXICO RAILWAY COMPANY ET AL.

Submitted November 13, 1912. Decided January 7, 1913.

Minimum carload weight of 22,000 pounds on calves from Refugio, Tex., to New Orleans, La., and St. Louis, Mo., found unreasonable and a minimum of 17,000 pounds prescribed for the future.

Irvin Kibbe for complainant in person.

R. J. McMillan for St. Louis, Brownsville & Mexico Railway Company.

H. A. Scandrett, Baker, Botts, Parker & Garwood, J. P. Blair, and James G. Witson for Texas & New Orleans Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Houston & Texas Central Railroad Company; Louisiana Western Railroad Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

L. B. Comer for Missouri, Kansas & Texas Railway Company and Missouri, Kansas & Texas Railway Company of Texas.

T. P. Littlepage for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a stockman residing at Victoria, Tex., by petition, filed November 28, 1911, alleges that an excessive and unreasonable minimum weight is applied on shipments of calves from Refugio, Tex., to New Orleans, La., and St. Louis, Mo. The establishment of a reasonable minimum weight for the future is asked.

From Refugio the rates on both cattle and calves are to New Orleans 44½ cents per 100 pounds, and to St. Louis 52½ cents per 100 pounds, with a minimum carload weight of 22,000 pounds for 36-foot cars, applicable on both commodities. Complainant contends that this minimum should not exceed 16,000 pounds. Defendants object to any reduction in the minimum, unless rate is advanced, on the ground that it will make the per-car charges unreasonably low. Defendants also call attention to the fact that a shipper may order

a double-deck car on which a minimum weight of 30,000 pounds applies, and into which they claim the full minimum weight can be loaded; and that if defendants are unable to furnish a double-deck car, their tariffs provide that two single-deck cars may be used on the same basis. However, it appears that there are no facilities at Refugio for loading double-deck cars, and granting that double-deck cars were available and could be loaded, no sufficient reason thereby exists for the denial of a reasonable minimum weight for single-deck cars.

Calves range in weight from 150 to 400 pounds each, but generally weigh between 200 and 275 pounds each. From eighty to eighty-five 200-pound calves, or from sixty to sixty-five 275-pound calves can be comfortably loaded in a 36-foot car. Several of complainant's witnesses stated that in their opinion the minimum weight should be between 16,000 and 18,000 pounds, and we think it is quite clear upon the record that ordinarily a minimum weight of 17,000 pounds would fairly represent the loading capacity of a 36-foot car. The minimum prescribed by the Texas Railway Commission is 16,000 pounds, and in the *Oklahoma Live Stock case*, 22 I. C. C., 160, this Commission prescribed a minimum weight of 17,000 pounds.

Upon consideration of all the facts and circumstances we are of the opinion and find that the present minimum weight of 22,000 pounds, for 36-foot cars, applied on shipments of calves from Refugio to New Orleans and St. Louis is excessive and unreasonable, and that for the future it should not exceed 17,000 pounds. It is understood however that no opinion is here expressed upon the present rates. An order will be entered accordingly.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 150.
IMPORT RATES ON MANGANESE ORE.

Submitted November 29, 1912. Decided January 7, 1913.

Cancellation of tariff provision for application of import rates on ground manganese ore, ground at Elizabethport, N. J., was suspended. Upon investigation; *Held*, That the arrangement which respondent seeks to cancel is unduly preferential to protestant. Orders of suspension vacated.

Robert Gilchrist for protestant.

T. B. Koons for respondent.

W. A. Harshaw for intervener.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

To become effective August 23, 1912, the Central Railroad Company of New Jersey, by supplements Nos. 5 and 6 to its tariff I. C. C., S. No. 4210, and effective August 24, 1912, in supplement No. 4 to its tariff I. C. C., S. No. 4214, sought to cancel the following provision:

On manganese ore, carloads, import via New York, moved thence to Elizabethport, N. J., by rail at regular tariff rates, or to Elizabethport, N. J., direct by barge, there delivered to consignees, there ground, prepared and put in packages and reshipped (without losing its identity) will be subject to rates from Elizabethport, N. J., as shown herein.

Robert Gilchrist & Company, importers and manufacturers of ground ferromanganese, ferrosilicon, and ground manganese, located at Elizabethport, N. J., requested that the operation of the supplements canceling the items be suspended. They were suspended to December 21, 1912, by order of August 20, 1912; and by order of December 5, 1912, the suspension was extended to June 21, 1913. On the same date, December 5, 1912, the same items which were re-issued in supplement No. 10 to tariff I. C. C., S. No. 4210, and supplement No. 7 to tariff I. C. C., S. No. 4214, were suspended until April 19, 1913.

The tariffs name rates applying on traffic imported from foreign ports via certain New York lighterage points, including Elizabethport, to Rochester, Buffalo, and Pittsburgh rate points, and to western destinations, including St. Paul and St. Paul rate points.

Unless otherwise specified rates are stated herein per ton of 2,240 pounds. The minimum carload weight on manganese ore is 25

such tons, or the marked capacity of the car if less, but not less than 15 such tons.

The import rate to Chicago, instancing one among many, is \$3.60; the domestic rate is \$5. Cancellation of the provision above quoted will, therefore, have the effect of increasing the rates to the extent of the differences between the import and domestic rates. The lighterage rate from New York to Elizabethport, as well as the rail rate from Jersey City to Elizabethport, is 60 cents. There is a switching charge of 25 cents from the dock or station at Elizabethport to the mill. Protestant, however, by using facilities other than those of respondent, is able to move its ore from the ship's side to the dock at Elizabethport at a lower charge than the lighterage rate of respondent. This amount varies from the extremes of 25 and 45 cents. A fair average, however, is said to be 35 cents.

There are three concerns in this country whose principal or sole business is grinding manganese ore: that of protestant; The National Alloy Company, Limited, Philadelphia, Pa.; and intervener, the Harshaw, Fuller & Goodwin Company, at Elyria, Ohio.

Custom mills located in the vicinity of New York grind ore for consumers. The cost to consumers of having the ore transported to such mills does not appear.

Manganese ore is imported from foreign countries, principally from southern Russia. Formerly it was used almost entirely in the manufacture of varnish driers and glass. As the greater portion of these articles was imported the use of manganese ore was limited. A larger use has developed within the last few years, and it is now extensively used in dry batteries and in brick to give them a mottled appearance.

The grinding of manganese ore was only a small portion of protestant's business when it commenced operations about five years ago. Sales could not profitably be made to western destinations. The reason was found to be the difference between the import and domestic rates. On request of protestant the respondent established, effective January 1, 1911, the rates and privileges applicable from Elizabethport to Buffalo, etc., points, and, effective December 1, 1911, to St. Paul and St. Paul rate points. Thereafter protestant's business increased so greatly that the erection of an additional plant and an increase of \$35,000 in the investment became necessary, and to-day that plant is being rapidly outgrown. From 90 to 95 per cent of the manganese ore brought into and ground in the United States is used at western points to which import rates apply.

Respondent established the arrangement to foster an industry on its own line; in recognition of the difficulties protestant encountered in competing with importers of ground manganese ore, and because the commodity, in being transported from New York and Jersey City

to western points on import rates, passed through Elizabethport, from which point the higher domestic rate applied on ore ground by protestant.

Shortly after the issuance of our report in *The Transit case*, 24 I. C. C. 340, respondent learned that protestant was receiving manganese ore via the ports of Baltimore and Philadelphia. Connecting carriers that were parties to the tariffs containing the suspended items represented to respondent that its arrangement of rates placed a burden upon and discriminated against millers of manganese ore located on their lines. Those carriers are disinclined to establish a like arrangement because it is subversive of the principle that import rates are restrictively applicable to importations which, unless stored in a bonded warehouse, move continuously through from foreign countries to final destinations in the United States. It is asserted that it is the intent of the carriers to confine so far as they can import rates to raw materials and to the form or condition in which the commodities are imported, and that the granting of any privilege of milling in transit on imported raw materials would establish a precedent of doubtful desirability.

Manganese ore is dried, treated, ground, and placed in bags and barrels for transportation. These processes result in a comparatively small shrinkage in weight, the precise amount of which is not shown. No other material is added. The milling simply grinds the ore into small particles.

The ore imported via Baltimore and Philadelphia is moved out from protestant's plant in less than carloads, on which import rates do not apply, or in carloads to points to which there are no import rates. Respondent contends that if the present arrangement is continued it will be necessary in order to comply with our findings in *The Transit case*, *supra*, to provide regulations for properly policing it and, possibly, to install an inspector to prevent ore imported via ports other than New York being forwarded at import rates.

No testimony was offered as to the reasonableness of the rates in and of themselves. Protestant asserts that if, by the cancellation of the arrangement, it is compelled to pay domestic rates on imported ore which it grinds at Elizabethport, it will be subjected to undue prejudice in favor of its principal competitors, the foreign grinders. The act which we administer was not passed to reenforce the provisions of the tariff laws. *T. & P. Ry. Co. v. I. C. C.*, 162 U. S., 197.

Intervener is largely engaged in importing, milling, and marketing manganese ore. Import rates apply on the ore from the seaboard to Elyria; from there class rates apply on the ground ore. There is no arrangement at Elyria or Philadelphia similar to that granted at Elizabethport. Intervener has found itself unable to compete with the foreign dealer or miller who ships direct to point of consumption.

in this country, or with importers located at the seaboard. In 12 to 15 years its business grew from 300 tons to 10,000 tons per annum, but in the past two or three years it has diminished more than 50 per cent. The decrease is due to several causes: Foreign competition awakened to activity by the comparatively recent augmented use of manganese ore; competition of protestant since the establishment of the arrangement which respondent seeks to cancel and the grinding of ore by the consumers. Unsuccessful effort was made by intervenor to have ground manganese ore taken from the free list and made dutiable. It also suggested to the carriers that the import rates on the ground ore be discontinued and when shipped in packages class rates be applied.

The disadvantages of the inland grinder and the grinder at the seaboard who are not accorded an arrangement similar to that granted to protestant is shown by a comparison of aggregate in-and-out rates. To illustrate: To Chicago, as has been seen, the total cost to protestant of lighterage, switching, and transportation is now a maximum of \$4.45; the import rate from New York to Elyria is \$2.56, and the class rate thence to Chicago is \$2.40, a total of \$4.96. The domestic rate from Philadelphia to Chicago is \$4.60 and for switching to the plant the charge is 30 cents, making an aggregate of \$4.90.

In Conference Ruling No. 299c, of date December 17, 1910, we said:

So far as the fourth section is concerned, carriers are not required in the first instance to establish export and import rates which shall be measured and limited by domestic interstate rates between the same points of origin and destination in the United States.

It is clear that the arrangement which respondent seeks to change may be liable to abuse unless properly policed. But *The Transit case, supra*, does not require or of itself justify the attempted withdrawal of the arrangement, nor is that case involved in the issue here.

It is apparent that the arrangement gives protestant an advantage not possessed by other manufacturers engaged in like business. Protestant emphasizes its desire for equality, i. e., to have no more than others in like circumstances, and asserts that it is entitled to import rates if they are accorded to others.

If the suspended tariffs are permitted to become effective, the cost of moving a gross ton of manganese ore to Madison, Wis., a point to which many shipments are made, will be as follows:

From New York, when imported through that port, \$7.19 if respondent's lighters are employed or \$6.94 if independent lighters are used; when imported through the port of Philadelphia and moved thence via New York, \$7.34 via the Pennsylvania Railroad and \$7.54 via the Philadelphia & Reading; when imported through the port of Baltimore and moved thence via New York, \$7.89.

From Philadelphia, when imported via that port, \$6.24 via the Pennsylvania Railroad and \$6.94 via the Philadelphia & Reading; when imported through the port of Baltimore and moved thence via Philadelphia, \$7.28 via the Pennsylvania Railroad and \$7.51 via the Baltimore & Ohio; when imported through the port of New York and moved thence via Jersey City and Philadelphia, \$7.74.

Combined rates to and from Elyria on ore imported via the port of New York, \$6.52, and on that imported via the ports of Philadelphia or Baltimore, \$5.92.

There is no lighterage charge at Philadelphia. The shipper there is of course entitled to the differential of 40 cents under New York, and assuming that the switching charge at Philadelphia is reasonable, the Philadelphia shipper should be able to reach Madison at 70 cents per ton less than the New York shipper.

If the intervener were compelled to pay domestic rate from New York to Elyria his cost on shipments to Madison would be \$7.76 through the port of New York, \$7.36 through Philadelphia, and \$7.16 through Baltimore.

It costs protestant from 60 to 85 cents per ton to get the rough ore to its plant. It costs the intervener from \$1.96 to \$2.56 to get the ore to his plant. Protestant is located 900 miles and intervener about 380 miles from Chicago. The sum of the import rate to Elyria and the local rate from Elyria to Chicago is \$4.96, 4 cents less than the domestic rate from Elizabethport to Chicago.

It is also to be noted that the charge from Chicago to Madison is \$1.34 on shipments from New York, Philadelphia, or Baltimore and \$1.56 on shipments from Elyria.

All of the import rates apply from ship side and are the same on manganese ore, whole or ground. If, therefore, there is no arrangement under which the domestic grinder may have import rates upon his ground ore he is, manifestly, at a great disadvantage as compared with the foreign grinder. If the intervener enjoys import rates on the whole ore and protestant is required to pay domestic rates on ground ore, the carriers from New York perform for intervener lighterage or terminal service which protestant must pay for. There is no apparent reason why the ore rate from Chicago to Madison should be less upon shipments from the seaboard cities than upon shipments coming from other points.

The aggregate charges paid by protestant and those paid by intervener are not the same for transporting the ore from ship's side to a given western destination. They will not be the same if the suspended tariffs become effective. Respondent and other carriers transport protestant's shipments and participate in the transportation of the same commodity between the same points for intervener. Whether or not these facts do or would create or constitute undue

preference or unjust discrimination is not before us, and as to that no opinion is expressed. The fact that, for reasons hereinafter stated, the suspended items are permitted to be made effective is not, however, to be understood as an approval of the rate adjustment that will thus be created, or as a finding that that adjustment will be free from unjust discrimination or undue prejudice. We have before us only the question of a local arrangement upon the line of one carrier. If an adjustment is not made by the carriers which is reasonable and free from unjust discrimination and undue prejudice it will be subject to complaint or to investigation by the Commission.

In its tariffs which contain the provision in controversy respondent provides:

Rates named herein apply only on property received from ship's side or dock of vessel upon which imported, or from custom bonded warehouses or appraisers' stores (not internal-revenue stores) except as otherwise noted. (See note.)

NOTE.—Will not apply on pig tin.

Protestant can do anything which any other importer may do, and must not do anything which the tariffs prohibit others from doing. For example, he may ship ground manganese ore direct from foreign countries to destinations in this country, or he may buy ground manganese ore and comply with the above regulations and import rates apply. But immediately the ore, whole or ground, loses its character as import traffic as defined above, domestic rates apply for all except protestant. By the arrangement here considered the import character of the ore is retained after it is ground by protestant, even though protestant takes his ore from the ship by lighters over which respondent has neither control nor supervision. The provision was legal so far as tariff construction and lawful notice were concerned, but as was said by the Supreme Court in *I. O. O. v. B. & O. R. R.*, 225 U. S., 326:

Tariffs are but forms of words, and certainly the Commission in the exercise of its power to administer the interstate commerce act, can look beyond the forms to what caused them and what they are intended to cause and do cause.

In *Wight v. United States*, 167 U. S., 512, 518, it is said: "It was the purpose of the section (2) to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor." These words are given more precision by the declaration "that the phrase, 'under substantially similar circumstances and conditions' as found in section 2, refers to matters of carriage, and does not include competition. * * *" Once depart from the clear directness of what relates to carriage only and we may let in considerations which may become a cover for preferences. May a carrier look beyond the service it is called upon to render to the attitude and interest of the shippers before, or their attitude and interest after, transportation? * * * The Commission has ordered equality and struck down what it deemed to be preferential charges, even though they were made under formal tariffs.

If the importer at New York takes manganese ore from the custody of the carrier at ship's side or at the dock, unless it is put in a custom-bonded warehouse, domestic rates apply. There is nothing in the carriage for protestant which differentiates the transportation for it from that for others. On the record we are of the opinion that the tariff items which respondent seeks to cancel operate to grant to protestant a privilege that is not accorded to others under similar circumstances and conditions, and hence effect undue preference.

The order of suspension will be vacated as of February 1, 1913.

No. 4782.

STANDARD VITRIFIED BRICK COMPANY ET AL.

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted November 29, 1912. Decided January 7, 1913.

Rate of 12½ cents per 100 pounds on brick from the Kansas gas belt to various Chicago, Burlington & Quincy stations in Missouri and Iowa for an average haul of 400 miles not found to be unreasonable or unjustly discriminatory. Complaint dismissed.

Keplinger & Trickett and J. P. Casey for complainants.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

Henry G. Herbel for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The several complainants herein manufacture brick at various points in the so-called Kansas gas belt, all located within an area 70 miles north to south by 20 miles east to west. Prior to September 15, 1909, these points of production, 10 in number, were blanketed under a rate of 10 cents per 100 pounds on shipments of brick to destinations on the main line of the Chicago, Burlington & Quincy Railroad Company between Burlington, Iowa, and Omaha, Nebr., and on branches to the north and south of that line in southern Iowa and northwestern Missouri, including, as representative of the area,

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Ottumwa, Oskaloosa, Des Moines, Villisca, Carson, Shenandoah, and Centerville, in Iowa, and Cameron, Chillicothe, and Bucklin, in Missouri, together with all intermediate stations. The transportation involves a two-line haul in every instance, that portion of the haul from point of production to Kansas City being performed by either the Atchison, Topeka & Santa Fe Railway Company, Missouri Pacific Railway Company, St. Louis & San Francisco Railroad Company, or Missouri, Kansas & Texas Railway Company. On the date mentioned the Chicago, Burlington & Quincy withdrew its concurrence in this rate of 10 cents because, it alleges in petition and evidence, the 5 cents per 100 pounds received as its division for the haul beyond Kansas City was unreasonably low, the result being that brick moving from the gas belt to these destinations via its line and connections were thrown back into the classification under class E, with advances in rate ranging from 3 to 5 cents per 100 pounds. On August 1, 1911, joint rates were reestablished in connection with the Burlington to practically all of the stations in issue on basis of the combination on Kansas City of 12½ cents, which rate is the subject of complaint.

The Chicago, Milwaukee & St. Paul; Wabash; Chicago & Alton; Chicago Great Western; Chicago, Rock Island & Pacific; and Quincy, Omaha & Kansas City railways also serve the same general sections of Iowa and Missouri in which the Burlington stations here involved are located and reach many of the same points, as delivering lines, as that carrier. These carriers have not withdrawn their concurrence in the 10-cent rate. Complainants therefore have available routes to most of the stations in question under that rate, which routes they concede are ordinarily satisfactory, the only exception being a few cases in which better delivery to industries is effected by the Burlington. Complainants' real contention is with reference to local stations on the line of the Burlington, at which the 12½-cent rate will not permit of successful competition with local brickyards and with Galesburg, Illinois, and Chicago, from which the rates are 7½ and 11½ cents, respectively. The maximum distance from Galesburg to these stations is about 300 miles and from Chicago about 460 miles, the Burlington performing the entire haul. The average distance from the gas belt is near 400 miles. Most of the brick from Galesburg is of the paving kind, while complainants, although manufacturers of brick of various kinds, ship chiefly common building brick, which are not competitive with paving brick, to the territory in question. As to Chicago, the record shows that but few brick sold at these stations originate at that point of origin.

In *Frederick Brick Works v. N. C. Ry. Co.*, 12 I. C. C., 13, involving rates on brick from Frederick, Md., to Elberon, N. J.; in *Nebraska*

Material Co. v. C., B. & Q. R. R. Co., 20 I. C. C., 89, involving rates from Mound Valley, Kans., to Tecumseh, Nebr.; and in *Ashland Fire Brick Co. v. S. Ry. Co.*, 22 I. C. C., 115, involving rates from Ashland Ky., and vicinity to Birmingham, Ala.; the Commission held the following rates to be reasonable for the distances shown:

Rate	Miles.	Per ton-mile.
<i>Cents.</i>		<i>Mills..</i>
13.75	236	11.6
12	330	7.27
15	523	5.73

The rate here complained of yields 6.2 mills for an average distance, as stated, of approximately 400 miles, which can not be considered materially out of line with the rates shown above or in comparison with the rates on cement from the gas belt to practically the same general territory of distribution as is involved in the present proceeding, recently passed upon by the Commission in *Ashgrove Lime & Portland Cement Co. v. A., T. & S. F. Ry. Co.*, 23 I. C. C., 519.

Upon full consideration of the facts disclosed, we do not find the rate in question to be unreasonable or unjustly discriminatory. The complaint will therefore be dismissed. It will be so ordered.

25 I. C. C.

No. 4686.
BARTLESVILLE SALVAGE COMPANY ET AL.
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted September 20, 1912. Decided October 15, 1912.

Rate and minimum weight charged for the transportation of scrap iron from Bartlesville, Okla., to St. Louis, Mo., found unreasonable.

Shea & Blue for complainants.

J. W. Allen, Joseph M. Bryson, and C. S. Burg for Missouri, Kansas & Texas Railway Company.

J. C. Burnett and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

The complainants are dealers in scrap iron at Bartlesville, Okla. By petition, filed February 13, 1912, they allege that defendants' rate for the transportation of scrap iron from Bartlesville to St. Louis, Mo., is unreasonable and unjustly discriminatory. Reasonable rates for the future are sought.

From Bartlesville to St. Louis the defendants maintain a rate of 20 cents per 100 pounds on scrap iron in carloads, minimum weight 30,000 pounds. From and to the same points they have a rate of 13 cents on spelter in carloads, minimum weight 36,000 pounds. Spelter is the more valuable commodity, and it is alleged that it is unreasonable to charge a higher rate on scrap iron than on spelter.

The complainants buy and collect scrap iron in Bartlesville and the surrounding country, where a great deal accumulates from the oil-well operations.

Spelter is a metal product of lead and zinc. The complainants do not ship spelter and are not interested in the rate on that commodity, and they admitted that the spelter rate has no bearing upon the scrap-iron business. Therefore, no discrimination against complainants' traffic can result from a lower rate on spelter, unless the rate on spelter is so low as to be unremunerative, and therefore fail to carry its share of the burden in producing revenue. Spelter in bulk

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and weight is not materially different from scrap iron so far as transportation conditions are concerned. While the charge for transporting scrap iron from Bartlesville to St. Louis is one-half its value and of spelter approximately one-fiftieth of the value, there is no substantial difference in the risk involved. The low spelter rate is said to be influenced by competitive conditions and to be predicated in a measure upon consideration of the fact that the carriers have enjoyed the haul on ore and fuel to the smelter.

Complainants argue that scrap iron, being a lower-priced commodity, should take a lower rate than spelter. Defendants assert that the spelter rate was established quite a while ago under peculiar conditions, and that it is unreasonably low. If this contention of the defendants be true, it follows of course that we would not be justified in fixing a rate on scrap iron based on any definite relation to the rate on spelter.

The defendants assert that the scrap-iron rate is reasonable and nondiscriminatory, and in support thereof submit comparisons with scrap-iron rates from other points, some of which are set forth in the following table:

Rates on scrap iron to St. Louis, Mo.

From—	Distance.	Rate per 100 pounds.	Rate per ton per mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Bartlesville, Okla.	448	20	0.892
Coffeyville, Kans.	415	19½	.839
Vinita, Okla.	360	20	1.111
Wichita, Kans.	479	22	.918
Salina, Kans.	464	22	.904
Burlington, Kans.	382	19½	1.021
Eldorado, Kans.	440	22	.979
Oklahoma City, Okla.	542	22	.811
Muskogee, Okla.	457	22	.903
Guthrie, Okla.	532	22	.837
Independence, Kans.	432	20½	.951

The rates cited above are for comparable distances and from points where complainants probably have such competition as exists in the trade. They show that other shipping points for scrap iron do not have any preference in rates; in fact the per-ton-mile test discloses a degree of equality in the rates.

Complainants contend, however, that the scrap-iron rate presents a case of charging more than the traffic can bear and that it is therefore *per se* unreasonable. While the rule suggested has some weight with a carrier in the making of its rates, it does not, for instance, impose upon a carrier any duty to carry at a loss traffic which, by reason of its low value or the length of haul, can not afford to pay a rate that will be at least compensatory to the carrier. The fact that a shipper is unable to ship under a particular rate constitutes no

justification for reducing such rate in the absence of a showing that it is unreasonable, and the contention that the cost price of scrap iron plus the freight rate leaves no margin of profit or involves a loss can not be admitted as a test of the unreasonableness of the transportation charge. *Fla. Fruit & Veg. Asso. v. A. C. L. R. R. Co.*, 17 I. C. C., 552.

The defendant Missouri, Kansas & Texas Railway offers the direct line from Bartlesville to St. Louis. At \$4 per ton, the rate on scrap iron yields, as shown, 0.892 cent per ton-mile. The report of this company for the year ending June 30, 1910, shows an average per-ton-mile revenue of 1.054 cents; for the year 1911 the average was 1.074 cents, only slightly in excess of the scrap-iron rate. For the latter year the per-ton-mile earnings on certain selected commodities were as follows:

	Cent.
Grain.....	0.913
Coal.....	.604
Lumber.....	.638

The average haul per ton over this road for the year ending June 30, 1910, was 216.6 miles, and the average revenue received per ton of freight therefor \$2.28315, as against \$4 per ton on scrap iron for a haul of 448 miles. From a study of these figures, the scrap-iron rate appears relatively high as compared with other commodities. Though not published as such, it is stated by the defendants that the scrap-iron rates are practically blanketed over a considerable territory, and the intimation is that the reduction in one rate—for example, that from Bartlesville will entail reduction from other points. This, even if true, is no sufficient reason for refusing to reduce the Bartlesville rate if that rate is unreasonable.

Upon consideration of all the facts and circumstances of record, it is the finding and conclusion of the Commission that the rate on scrap iron from Bartlesville, Okla., to St. Louis, Mo., is unreasonable to the extent it exceeds a rate of 17 cents per 100 pounds. We believe, however, that the minimum of 30,000 pounds prescribed in connection with the present rate is unduly low and may reasonably be fixed at 40,000 pounds. This adjustment will perhaps enable the traffic to move, and it will at the same time not reduce the per-car revenue of the defendants. An order will be entered requiring defendants to cease and desist from charging their present rates and to establish in lieu thereof a rate of 17 cents per 100 pounds in carloads, subject to a minimum of 40,000 pounds.

25 I. C. C.

No. 4074.

IN THE MATTER OF THE INVESTIGATION OF ALLEGED
UNREASONABLE RATES AND PRACTICES INVOLVED
IN THE TRANSPORTATION OF WOOL, HIDES, AND
PELTS FROM VARIOUS WESTERN POINTS OF ORIGIN
TO EASTERN DESTINATIONS.

No. 2634.

RAILROAD COMMISSION OF OREGON

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

No. 3939.

NATIONAL WOOL GROWERS' ASSOCIATION

v.

OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted November 6, 1912. Decided January 7, 1913.

1. It is by no means true that because a rate is found unreasonable upon a given date it has been unreasonable during the two years preceding, and it can not be assumed that whenever the Commission holds a given rate to be unreasonable it will, as a matter of course, award reparation upon the basis of the rate found to be reasonable as to all payments within the two-year limitation.
2. The Commission is not satisfied that the complainant has shown that the rates as stated in the tariffs of the carriers were unreasonable up to the date of the original decision herein, March 21, 1912, but from that date the rates and regulations suggested by the Commission are held to be reasonable, and the rates and regulations of the carriers have been unreasonable and unlawful to the extent that they have varied from these.
3. Reparation from March 21, 1912, will be awarded herein upon the basis of the rate found reasonable by the Commission.

V. O. Johnson and P. S. Haddock for National Wool Growers' Association.

C. B. Atchison for Railroad Commission of Oregon.

F. A. Jones for Arizona Corporation Commission.

W. J. Anderson for St. Louis Wool Trade and others.

P. W. Coyle for Business Men's League of St. Louis.

J. F. Ehringer for H. T. Thompson & Company and others.

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H. A. Scandrett for Union Pacific Railroad Company and others.
J. D. Armstrong for Great Northern Railway Company and others.
E. N. Clark and *J. D. Mc Murry* for Denver & Rio Grande Railroad Company.

T. J. Norton and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company.

A. P. Matthew for Western Pacific Railway Company.

R. B. Scott for Chicago, Burlington & Quincy Railroad Company.

Eugene Fox for Chicago, Rock Island & Pacific Railway Company and others.

J. T. Marchand for Interstate Commerce Commission.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Chairman:

This complaint, attacking rates on wool from points in the far west to eastern markets, was filed March 20, 1911. On March 21, 1912, the Commission, having in the meantime conducted an extended investigation, decided the case, holding that the rates then in effect were unreasonable and suggesting certain different rates, regulations, and practices for the future. 23 I. C. C., 151. No order was made, but the rates found reasonable were, during the summer of 1912, voluntarily established by the carriers.

The petition asked for reparation. The original report reserved that question for further consideration, and it is now before us for disposition.

The first section of the act to regulate commerce provides that charges for the transportation of passengers or property shall be just and reasonable, and declares that every unjust or unreasonable charge, or any part thereof, is unlawful.

Section 8 makes a common carrier, subject to the provisions of the act, liable to the person injured for whatever damages may accrue by reason of the doing of any act prohibited or declared to be unlawful by the statute.

Section 9 provides that any person claiming to be damaged in accordance with the provisions of section 8 may either begin suit in court or apply to this Commission, and the Supreme Court of the United States has held, in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, that where the damage arises out of the payment of an unreasonable charge for a transportation service the proceeding must be initiated before the Commission. It is established, therefore, that a person who has paid an unreasonable transportation charge may maintain proceedings before this Commission for the recovery of his damages.

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The Commission itself holds that the payment of the unreasonable rate creates a right of action against the carrier, and that the measure of damages, ordinarily, is the difference between the rate paid and what would have been a reasonable rate for the transportation service rendered. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C., 199. It further holds that the person entitled to an award of these damages is the one who has actually paid the rate. When, therefore, it appears that an unreasonable rate has been paid, the one paying it is entitled to an award of reparation in the amount of the difference between the rate paid and the rate which should reasonably have been paid.

The statute provides that no order for reparation shall be made by the Commission unless claim is filed with it within two years from the time the cause of action accrues, and it seems to be assumed in many quarters that whenever the Commission holds a given rate to be unreasonable it will, as a matter of course, award reparation upon the basis of the rate found to be reasonable as to all payments within the two-year limitation. This is by no means so, since it does not of necessity follow that because a rate is found unreasonable upon a given date it has been unreasonable during the two years preceding, and reparation can only be granted where it is found that the charge was unreasonable when paid.

There is no exact standard by which the reasonableness of a rate can be measured. While there are many facts capable of precise determination which bear upon that question, the final answer is a matter of judgment. The traffic official who establishes the rate exercises his judgment in the first instance, and the Commission when it revises that rate substitutes its judgment for that of the traffic official. With varying conditions the reasonableness of a rate itself may vary, so that the rate which is reasonable to-day may be unreasonable to-morrow.

Consider the rates involved in this proceeding, namely, those on wool from far-western points of production to eastern destinations. These rates were established many years ago. When established, all the incidents of transportation in that country were different from what they are now. The railroads themselves were much less substantial. Traffic was nothing like as dense. In the period elapsing between the establishment of these rates by the carriers and the decision of this case by the Commission almost every condition which bears upon the reasonableness of a transportation charge by rail had undergone a transformation. It may well be that the rates were entirely reasonable when established, although unreasonable when the opinion of the Commission was promulgated.

Assuming this to be so, when did these rates cease to be reasonable and become unreasonable? Manifestly, this point of time is not susceptible of exact determination, but is, again, a question of judgment.

In this case the rates and practices themselves which the Commission found reasonable were entirely unlike those supplanted. The Commission established a graded rate, while the rate formerly in effect had applied to an extensive blanket. In this case it was our opinion upon the whole that it would be better and more just to apply a rate increasing with distance, although we have often approved group or blanket rates.

The Commission established one rate for wool in sacks and another for baled wool, although in the past from most of the territory involved the sack rate had been the only one in effect.

Under the old system there had been either no minimum or a minimum of 20,000 pounds. The Commission fixed in case of wool in sacks a minimum of 24,000 pounds for a car 36 feet in length, with a proportional increase as the length of the car increased, while for baled wool a minimum of 32,000 pounds was established.

It appeared from the evidence produced upon the investigation that formerly the state of the sheep industry was such that the old rates could be paid with ease, whereas that industry, owing to its less prosperous condition, now finds these rates a serious burden; that is, the traffic could formerly bear a higher rate than at present.

In every case like this the Commission must fix the point of time at which the rate becomes unreasonable, must determine when shippers were entitled, and when carriers ought to have established the rate found reasonable. Manifestly each case must depend upon its own facts, and the complainant must assume the burden of showing that the rates paid have been unreasonable. In the present instance, upon a consideration of the whole situation, we are not satisfied that the complainant has shown that the rates as stated in the tariffs of the carriers were unreasonable up to the date of our decision, but we do hold that from that date the rates and regulations suggested by the Commission have been reasonable, and that the rates and regulations of the carriers have been unreasonable and unlawful to the extent that they have varied from these, from which it follows that reparation will be awarded upon the basis of the rates found reasonable by the Commission, from March 21, 1912.

Shippers entitled to this reparation should present their claims in the first instance to the carriers, with a view to agreeing, if possible, upon the amount due. When an agreement has been reached the result, and a statement showing the shipments on account of which the amount is to be refunded, should be laid before the Commission.

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If found correct an order will be issued for the repayment. If no agreement can be reached, then the claims must be filed with the Commission by petition in the nature of an intervening petition in this proceeding, whereupon the Commission will proceed to ascertain the amount due and make an order.

It should be noted that all claims must be filed with the Commission within two years from the time the freight was delivered, and that a filing with the railroad company is not a filing with the Commission.

No. 4255.

NATIONAL MOHAIR GROWERS' ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 6, 1912. Decided January 7, 1913.

Following the *Wool case*, 25 I. C. C., 875, reparation on shipments of mohair will be awarded from March 21, 1912.

No appearance for complainant.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

A. P. Matthew for Western Pacific Railway Company.

H. A. Scandrett for Union Pacific Railroad Company and others.

J. D. Armstrong for Great Northern Railway Company and others.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Chairman:

The above case involves rates upon mohair and was heard and decided in connection with the *Wool case*, 23 I. C. C., 151, reparation was also claimed in this proceeding, and the question was reserved for further consideration. 23 I. C. C., 180.

Our decision here is the same as in the *Wool case*, *ante*, page 675. We hold that rates upon mohair, involved in this complaint, and with respect to which reparation was claimed, were unreasonable on March 21, 1912, and have since been unreasonable by the amount that they have exceeded the rates prescribed in our former opinion, and that reparation should be awarded upon the basis of those rates. The procedure to obtain such damages has already been outlined in the preceding case.

INVESTIGATION AND SUSPENSION DOCKET Nos. 89, 89-A, 89-B, 89-C, 89-D, 89-E, 89-F, 89-G, 89-H, 89-I, 89-J, 89-K, AND 89-L.

RATES ON HAY FROM THE NORTHWEST TO CHICAGO.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCE OF RATES BY CARRIERS FOR THE TRANSPORTATION OF HAY IN CARLOADS FROM POINTS IN WISCONSIN TO CHICAGO, ILL., AND BETWEEN OTHER POINTS.

Submitted July 10, 1912. Decided January 13, 1913.

1. The fact that the advance in commodity rates on hay brings those rates up to the class-C basis is not in itself proof of the reasonableness of the increased rates.
2. Terminal expenses incident to delay in releasing equipment can not properly be charged against each shipment and should not be included in the line rate.
3. The law requires carriers to charge reasonable rates and if the present advance leaves the rates within the realms of reasonableness, a somewhat similar advance in 1908 can not be held to constitute an estoppel.
4. Advanced rates on hay in carloads from North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, and Iowa to Chicago and other western markets found to be reasonable and permitted to become effective without prejudice to any future proceeding attacking such rates as unjustly discriminatory.

W. M. Hopkins for Board of Trade of Chicago.

C. C. Wright and *F. P. Eymann* for Chicago & North Western Railway Company.

H. M. Pearce and *C. C. Wright* for Chicago, St. Paul, Minneapolis & Omaha Railway Company.

W. F. Dickinson and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company and St. Paul & Kansas City Short Line Railroad Company.

R. B. Scott, *E. R. Puffer*, and *H. H. Holcomb* for Chicago, Burlington & Quincy Railroad Company.

Walter H. Jacobs for Chicago Great Western Railroad Company.

A. P. Humburg for Illinois Central Railroad Company.

George W. SeEVERS and *F. B. Townsend* for the Minneapolis & St. Louis Railroad Company.

J. W. Davis and *H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company.

E. F. Potter for Minneapolis, St. Paul & Sault Ste. Marie Railway Company.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

Advanced rates on hay from North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, and Iowa to Chicago, Ill., and other western markets, proposed in tariffs filed with this Commission to become effective on and about March 15, 1912, were suspended at the instance of shippers to and dealers in Chicago, and this proceeding instituted. Except for two stations in Minnesota, where the advance is $5\frac{1}{2}$ cents, the increase ranges from one-half to $4\frac{1}{2}$ cents per 100 pounds and may be said to average about 2 cents. Two grounds of justification are pleaded: First, the insufficiency of revenue received from the traffic and, second, the discrimination which the present rates bring about in favor of hay as against other commodities. Protestants deny that the carriers have sustained either of these grounds and contend that the advance discriminates against Chicago in favor of Minneapolis, Minn., Milwaukee, Wis., and St. Louis, Mo., particularly the latter, to which points equal increases have not been made. In fact, it is this alleged discrimination against which the protest is mainly directed.

Under western classification hay takes the class-C rate, but to Chicago and other terminal markets commodity rates lower than class C have generally obtained. The advances in question bring the rates up to the class-C basis in most instances, the exceptions being in the case of long hauls, where class-C rates would result in a considerable increase, and in the case of the Chicago, Milwaukee & St. Paul Railway Company which has observed a maximum advance of $3\frac{1}{2}$ cents. To Minneapolis, Milwaukee, and St. Louis the commodity rates have been advanced to the same basis, but as the class-C rates to Chicago and to the other markets do not always represent the same spread as the commodity rates, the increases to Chicago are in reality greater in a number of instances. From points in Minnesota to Minneapolis and from points in Wisconsin to Milwaukee no change has yet been made because of the rates fixed by the respective state commissions, though defendants assert their intention to make similar advances in those states.

To hold the increased rates reasonable simply because they are the same or less than the class-C rates would necessitate a finding, first, that class C was the proper classification for hay, and, second, that the class-C rates were reasonable. The class-C rates are not in issue nor have we for consideration a classification item. What we must determine is whether or not, under all the circumstances the advanced rates, with justice to all parties, can be allowed to become effective, and to do this we must consider the reasonableness of the proposed rates as applied to hay, and their discriminatory effect, if any.

We shall first dispose of one contention of defendants to which much time both in testimony and in argument was devoted. It is urged that the terminal expense incident to delays in unloading hay is greater than upon any other traffic and that this affords some justification for the increased rates. Without going more into detail it is sufficient to say that the terminal question at Chicago, so far as hay is concerned, appears susceptible to much improvement. There is an immense movement of hay to that city, all of which is placed upon team tracks, and there unloaded or reconsigned after sale. The volume of business has become so great that separate tracks are reserved for hay shipments, but these appear inadequate and cars are detained for days in the carriers' yards before room can be found for them on the team tracks. For this delay to equipment no demurrage is paid because no delivery has been accomplished. The shippers contend that the carriers have not sufficient terminal facilities, while the roads argue that the congestion is due to the failure of hay dealers promptly to unload the cars on the team tracks; that additional team tracks would not expedite the release of equipment but would merely give the carriers an opportunity to collect more demurrage. Under the custom long in effect in Chicago the team track is virtually the hay dealer's salesroom; to these tracks he takes his prospective customer and from them makes his sale in whole or in part, after which the car may be unloaded or reconsigned. This system naturally makes for congestion on the team tracks, though the demurrage actually collected on these cars can not be said to be wholly disproportionate to that charged against other carload commodities. While additional terminal facilities might be of benefit, it would seem that some relief could be accomplished if consignees were notified of arrival of shipments as soon as the train is broken and the billing received. At present the notice is held up until the car is actually placed on the team track—sometimes a week after its arrival. We are not attempting in this case to remedy the congestion occasioned by this hay traffic but think this situation properly entitled to comment. So far as the rate to Chicago is concerned the increase can not be justified because of delays in releasing equipment. It is not contended that every consignee is guilty of delay, and it may often happen that the consignee who will promptly unload, has a car detained several days in the yard because of the dilatory action of another dealer who has trouble in disposing of a consignment on the team tracks. The innocent should not be made to bear the sins of the guilty, and any additional compensation to which these carriers may be entitled because of such delays should be sought solely from the delinquent consignees. In other words this terminal expense can not properly be charged against each

shipment, and therefore should not be included in the line rate. The argument then that this delay to equipment should be considered in determining the reasonableness of the increased rates is fallacious.

As a general rule, the minimum applicable to hay is 11 tons. This applies on all cars 36 feet in length and under, and the average loading of hay in cars of all sizes is about that figure. Taking 15 cents as the average increased rate from Wisconsin, a carload of hay weighing 11 tons earns a revenue of \$33 for a haul of between 200 and 300 miles. From Green Bay, Wis., 200 miles from Chicago, the proposed rate is 12½ cents, and the per-car revenue at 11 tons, \$27.50. From the same point agricultural implements, loading 14 tons to the car, yield \$28; brick, with 32 tons to the car, \$51.20; and cement, 27 tons per car, \$43.20. The respective per-car revenues from Ashland, Wis., 423 miles to Chicago, are on hay at the advanced rate of 19 cents, \$41.80; agricultural implements, \$64.40; brick, \$64, and cement, \$54. From Aberdeen, S. Dak., 706 miles, hay, under the proposed rate of 25 cents, will earn \$55 per car as compared with \$123.20 on agricultural implements, \$131.20 on brick, and \$108 on cement. For the six months ending December 31, 1911, the Chicago & North Western Railway Company hauled from Wisconsin to Chicago 525 cars, at an average weight of 11 tons, an average car revenue of \$23.13, an average haul of 186 miles, and an average car-mile revenue of 12.45 cents. For an average haul of 398 miles from Minnesota the per-car revenue was \$36.27, or 9.11 cents per car-mile. The average earnings per car-mile on hay for the entire system is 10½ cents. The average per-car earnings on all commodities transported by the Chicago & North Western for 1911 was 17.49 cents, with an average haul of 166 miles, an average per-car revenue of \$29.06, and an average load of 27 tons. On the Rock Island for the same year the average per-car-mile earnings on hay were 10.56 cents, with an average load of 11.6 tons. The average on all traffic was 17.4 cents per car-mile. Brick paid 22.82 cents per car-mile, agricultural implements 17.47 cents, cement and lime 18.5 cents, and grain 22.58 cents. All of these comparisons show the earnings per car of hay to be quite low, but protestants urge that if larger cars were furnished a different result would be shown. They further insist that large cars are not furnished for hay shipments but are reserved for traffic that can be loaded therein to the better advantage of the carrier. While it was testified by one of the hay dealers that a large car could find a market as easily as a small one, we are advised of no specific instance where shippers have been denied large cars when such equipment was available. Hay will load only to about one-third the carrying capacity of the car, and with this light revenue tonnage the tare weight is the same as for commodities that may be loaded

three times as heavily. Taking the average weight of a car as 18 tons, appearing of record to be approximately correct, and the average hay loading as 11 tons, the gross is 29 tons, or for each revenue ton of hay the carrier must transport more than $2\frac{1}{2}$ gross tons. At an average revenue per car-mile of $10\frac{1}{2}$ cents for the transportation of 29 gross tons, the gross ton-mile revenue is 3.7 mills, or 37 cents per 100 gross ton-miles. This does not consider the empty movement, which, according to a witness for defendants, amounts to 30 per cent on all box cars, and would be about the same on hay. While these figures doubtless should be reduced by some allowance for empty movement, hay is loaded into any kind of a car possessing a roof, sides, and floor, and we are not prepared to say that the ratio of empty to loaded movement on hay is as great as upon other commodities.

As compared with the state distance scales in this territory, the proposed rates are not unreasonably high. From Faribault, Minn., to Chicago, 459 miles, it is proposed to make the rate 17 cents. For the same distance in Iowa the rate is $21\frac{1}{2}$ cents; in Kansas, $22\frac{1}{2}$ cents; in Nebraska, 37 cents; and in Missouri, where the maximum distance is 400 miles, $23\frac{1}{2}$ cents.

In 1908 a somewhat similar advance was made in the rates on hay to Chicago from the same hay-producing points, and protestants urge that defendants should not be allowed to make this further increase. But the law requires carriers to charge reasonable rates, and if the present advance leaves the rates within the realms of reasonableness, the increase of 1908 can not be held to constitute an estoppel.

Under all the circumstances we are of the opinion that the increased rates are not unreasonable. The charge of discrimination urged by protestants is more difficult to determine. As already stated, the advances to Chicago are greater than to St. Louis, although the attempt to raise the rates to the class-C basis applied equally to Chicago and St. Louis. We have here no information concerning the St. Louis adjustment, and we can not, upon this record, say whether or not the class-C rates as applied to hay to St. Louis and to Chicago unjustly discriminate against the latter. The same is true of the alleged discrimination in favor of Minneapolis and Milwaukee on hay moving from points in Minnesota and Wisconsin, respectively. We have held that carriers can not unjustly discriminate against interstate in favor of intrastate traffic, *Railroad Commission of Louisiana v. St. L. & S. W. Ry. Co.*, 23 I. C. C., 31, but we have not before us in this case sufficient data to make a finding upon this point. The increased rates, therefore, will be permitted to become effective as of January 13, 1913, but without prejudice to any future proceeding specifically raising the question of discrimination.

INVESTIGATION AND SUSPENSION DOCKET No. 109.

TRUNK-COVERING MATERIALS.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF TIN PLATE AND SHEET METAL FROM EASTERN SHIPPING POINTS TO POINTS IN OREGON, WASHINGTON, AND OTHER DESTINATIONS.

Submitted December 28, 1912. Decided January 6, 1913.

The attempt of certain shippers to move sheet metal of commerce under the description and rates applicable to trunk-covering materials directed the attention of the carriers to an obscurity in their tariffs and to the fact that lower rates were applicable to trunk-covering materials, although they are more highly manufactured and more valuable than the sheet metal of commerce. Tariffs filed to correct the improper relation of rates on the two commodities were suspended, but upon the facts disclosed the order of suspension is vacated.

James G. Wilson and B. T. Booze for Trans-Continental Freight Bureau, Union Pacific Railroad Company, and Northern Pacific Railway Company.

O. W. Dynes for Chicago, Milwaukee & Puget Sound Railway Company.

Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The protestants against the rates here suspended did not appear at the hearing but requested a hearing in case the carriers offered any substantial evidence in support of the proposed increase in rates. In the view that we take of the case we do not think a further hearing necessary, and now understand it is not desired.

The present tariffs, under the general heading of tin and articles of tin in boxes, barrels, or crates, contain two items, as follows:

1. Tin plate or sheet metal, mottled or rolled, for trunks.
2. Sheet, No. 12 and lighter (black or galvanized, but exclusive of planished or Russia), not bent or punched, corrugated, n. o. s., including ridge rolls.

Upon shipments under the first of these tariff provisions the rates applied, from all territory east of Chicago to north Pacific coast terminals, are a less-than-carload rate of \$1.25 per 100 pounds and a car-

25 I. C. C.

load rate of 75 cents per 100 pounds with a minimum weight of 30,000 pounds. The second provision describes what is referred to on the record as the sheet metal of commerce, and the rates applied from the same territory are \$1.40 per 100 pounds on less-than-carload shipments and 95 cents per 100 pounds on carload shipments, the minimum carload weight under the latter rate being 40,000 pounds.

It is established of record that the movement of trunk material, under the first provision with its lower rates, has been negligible, doubtless because there are no large trunk manufacturers at any of the north Pacific coast terminals. It is also shown that trunk coverings are made of metal sheets of light gauge and that the raw material of lighter gauge is more expensive than metal sheets of the heavier gauge; that metal trunk coverings are stamped, painted, and put through a drying process, being then embossed and figured; that the price of trunk metal approximates \$4.90 per 100 pounds f. o. b. the mills, while the ordinary black metal sheets, galvanized sheets, and galvanized plate iron vary in price from \$1.50 to approximately \$3 per 100 pounds. The carriers contend therefore, and in this we think they are right, that the trunk metal should move under rates at least as high as the rates applied to the less valuable sheet metal of commerce.

The attention of the carriers was called to this improper relation of rates on these commodities by the attempt on the part of certain shippers at Pacific coast terminals to move the sheet metal of commerce under the description and the rates applicable to trunk-covering material. They then observed that lower rates were applicable to the more highly manufactured and more valuable commodity; and the increase proposed in the tariffs which we have suspended was an attempt to readjust the rates on a proper basis, by striking from the tariffs now in effect the first provision above noted and inserting in its place "trunk covering, sheet metal, except japanned iron"; to articles of that character it is proposed to apply, between points shown in the present tariffs, the rates applicable to sheet metal of commerce, namely, a less-than-carload rate of \$1.40 per 100 pounds and a carload rate of 95 cents per 100 pounds upon a minimum carload weight of 30,000 pounds.

The objections made to the proposed higher rate do not involve the contention that they are unreasonable in themselves. The crux of the matter is that certain competitors of the protestants have been permitted to ship the sheet metal of commerce at the lower rates applicable to trunk metal. The proposed readjustment would therefore seem to satisfy the complaint; whatever rates may have been applied in the past the new tariffs will prevent any such discriminations in the future, and apparently were published with that end in view.

Another discrimination complained of was that the same descriptions and rates contained in the present tariffs also appear in tariffs governing shipments from the same originating territory to San Francisco and other California points, and that in consequence of the application made of these rates discriminations have been practiced in favor of the California terminals as against the north Pacific coast terminals. Since the hearing the carriers reaching the latter points have directed the attention of the California lines to the improper adjustment and we understand that tariffs have been filed which will apply to California terminals substantially the same provisions which are proposed in the tariffs under suspension.

Upon all the facts and circumstances appearing of record we have reached the conclusion that the last-mentioned tariffs removed the troubles complained of, that the carriers have justified the rates under suspension and that the order of suspension entered herein should therefore be vacated.

An order will be entered to give effect to these conclusions.

25 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 105.

RATES ON DRAIN TILE AND SEWER PIPE.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF ADVANCES IN RATES BY CARRIERS FOR THE TRANSPORTATION OF DRAIN TILE AND OTHER ARTICLES FROM POINTS IN CENTRAL FREIGHT ASSOCIATION TERRITORY TO VARIOUS DESTINATIONS.

Submitted December 11, 1912. Decided January 7, 1913.

1. Proposed advances in rates on drain tile between points in central freight association territory found to be unreasonable and unjustly discriminatory, and tariffs directed to be canceled.
2. Proposed advances in rates on sewer pipe contained in the same tariffs found to be justified and permitted to become effective.

D. P. Connell for New York Central lines.

Edward Barton and *J. W. Allison* for Baltimore & Ohio Southwestern Railroad Company and Cincinnati, Hamilton & Dayton Railway Company.

H. D. Pendleton for Vandalia Railroad Company.

E. S. Stephens for Chicago & Eastern Illinois Railroad Company.

E. Brooker for Erie Railroad Company and Chicago & Erie Railroad Company.

Walter Olds and *J. H. Grant* for New York, Chicago & St. Louis Railroad Company.

William Fitzgerald for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Railway Company of Indiana.

J. T. Johnston for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and Pennsylvania Company.

J. V. Zartman for drain tile shippers of Indiana and Ohio.

L. R. Whitney and *James Luther* for National Drain Tile Company.

J. Leo Child for Hancock Brick & Tile Company.

John A. Daley for Ayer-McCarrel-Reagan Clay Company.

Charles P. Lewis for Hoytville Tile Company.

Harry Landrum for Ohio Drain Tile Association.

E. O. Biglow for E. Biglow Company.

Frank R. Hale for American Clay Company.

J. M. Powell for Indiana Drain Tile Company.

Frank A. Larish, *James F. Dougherty*, and *A. Van O. Schenck* for Wm. E. Dee Clay Manufacturing Company and Wm. E. Dee Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

In this proceeding the following tariffs, by appropriate orders of the Commission, have been postponed in effective date from May 1, 1912, to February 28, 1913: Chesapeake & Ohio Railway Company of Indiana, I. C. C. No. 49; Chicago & Eastern Illinois Railroad Company, I. C. C. No. 2643, supplement No. 13 to I. C. C. No. 2465; Chicago, Terre Haute & Southeastern Railway Company, "South-eastern line," I. C. C. No. 66, supplement No. 6 to I. C. C. No. 12; Cincinnati, Hamilton & Dayton Railway Company, I. C. C. No. 2752, I. C. C. No. 2753; Cleveland, Cincinnati, Chicago & St. Louis Railway Company, I. C. C. No. 6001, I. C. C. No. 6003; Erie Railroad Company, I. C. C. No. A-4583; the New York, Chicago & St. Louis Railroad Company, I. C. C. No. 3213; the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company and the Cincinnati, Lebanon & Northern Railway Company, I. C. C. No. P-404; and Vandalia Railroad Company, I. C. C. No. 2598.

By these tariffs the carriers propose to advance their rates on drain tile and sewer pipe between points in central freight association territory in amounts averaging approximately from $\frac{1}{2}$ to $1\frac{1}{2}$ cents per 100 pounds. The tariffs also contain many reductions. As tile rates reach a maximum of 8 or 10 cents for extreme hauls the proposed advances approximate, perhaps, 20 per cent of the present rates on average hauls.

Drain tile are used almost exclusively for farm-drainage purposes. They are made plain without collar or other attachment for closing the joints and are laid merely end to end, the drainage being effected through the slight opening between. Soft-burned tile are frequently referred to as porous tile and the hard-burned variety as vitrified tile. In addition to some difference in the clay or shale used the vitrified tile are subjected to greater heat and for a longer period than are the soft grades. Vitrified tile are therefore more expensive, are better adapted to long hauls, and withstand frost and the pressure of deep laying better than do the soft tile. A third class are salt-glazed tile, which are vitrified tiles upon the surface of which salt-thrown into the kiln in the final period of baking, is melted into a sleek coating or glaze which effectively closes the pores and renders the tile impervious to water. This covering or coating is called a salt glaze. Finally, salt-glazed tile molded into shapes with collars or similar fittings for sealing the joints into a closed conduit are classed as sewer pipe. Tile not salt glazed are rarely, if ever, used in sanitary drainage and are not to any appreciable extent competitive in the market with unglazed tile.

Defendants seek to construe the present commodity tariffs on "porous drain tile" as limiting their application to soft tile, con-

tending that the vitrified tile takes sixth-class rates, or the basis applicable to sewer pipe. They state that the proposed tariffs, by their terms applicable on "drain tile," will afford one rate on all tile not classed as sewer pipe, an object much to be desired in the interests of simplicity in the tariffs. The shippers assert, however, that the present commodity rates on porous tile have always been available on all unglazed tile heretofore without question, and should be, as all tile not salt glazed is more or less porous, and therefore within the description "porous drain tile" in the present tariffs. Only one shipper testified to having paid the sixth-class rate on vitrified tile or ever to have had the question raised by the carriers as to any class of tile offered for transportation, whether of the soft or vitrified kind. In this connection it should be noted that certain of the proposed tariffs adhere to the previous description of "porous drain tile." It may also be remarked that farm drainage being effected chiefly, if not wholly, through the openings at the tile joints, it is difficult to see what material bearing this difference in description of unglazed tile has on the situation. If drain tile is in any degree porous, to require the carriers to determine the degree of that porosity would be to impose upon them a technical task impracticable and uncalled-for in the application of their tariffs.

The dividing line between drain tile and sewer pipe is also a matter of much discussion in the record. Certain of the manufacturers, some of whom make both kinds of pipe, contend that the application of the salt glaze is the line of differentiation, while the other view expressed is that the physical construction with collar or other attachment for closing the joints is the real test, especially as this seems to be the chief factor in the greater cost of sewer pipe over drain tile, the cost of the salt glaze being comparatively small. And we are impressed with the latter view. Vitrified tile not salt glazed frequently take an uneven or "flash" glaze, somewhat similar in appearance to the salt glaze, and while the salt-glazed tile may be readily distinguishable by those technically familiar with the tile industry, it is by no means certain that the carriers in all cases could positively determine the question any more than they could the degree of porosity of the different classes of unglazed tile. At least it would seem that numerous doubtful cases must of necessity arise. In the application of rates the nature of the commodities offered for transportation should be readily ascertainable upon inspection and should not be dependent upon some scientific process in their manufacture. Pipe plainly to be closed at the joints manifestly must be intended for the construction of a closed conduit, which would readily suggest their use in sanitary sewerage and as readily preclude the suggestion of their use in farm drainage as above described. We are therefore of opinion that the physical construction with this end in view

must be accepted as the more practical as well as the more logical description of sewer pipe from the standpoint of tariff application. Our discussion of the rates will therefore be in that view.

The principal reason advanced by the carriers for the proposed rates is their stated desire to bring about a uniformity in their tile rates that has never existed heretofore. Formerly, they state, the chief transportation of tile was of the soft variety and for short hauls in competition with the wagon trade. Later, for competitive reasons, the carriers met these short-haul rates from more distant plants that from time to time sprang up. As the tile industry developed vitrified tile became quite a factor; then came the salt-glazed tile and sewer pipe. As vitrified tile competes with soft tile, the manufacturers of the former, who, defendants contend, were required to pay sixth class although as stated this is disputed by protestant shippers, complained of the alleged undue discrimination in the granting of these commodity rates on soft tile. Pressure brought to bear, too, by the larger manufacturers upon the carriers was not without its effect in the growing unevenness in the general tile-rate adjustment. Defendants also refer to complaints from Illinois manufacturers, whose intrastate scale on the basis of 95 per cent of the Illinois tenth-class rates is higher than many of these interstate rates, tile moving on which the Illinois shippers are in competition with, particularly from factories in southwestern Indiana. The object of the proposed tariffs, therefore, the carriers explain, is to iron out the present incongruities which have gradually crept into the general fabric of these rates and to place all shippers, large and small, upon a practical equality for a similar service, and to have but one rate on all tile instead of differentiating between different kinds of porous tile. On the latter proposition both parties agree, the only point of difference being, as stated, that the protesting manufacturers claim always to have had that basis under the present tariffs. The proposed rates, while said to be practically the same for similar distances, are not published as a mileage scale, but are applicable between specific junction points, some 200 in number, intermediate stations taking the rate to the first junction point beyond in accordance with the usual practice in the application of certain scale rates effective in central freight association territory. Another advantage suggested by the carriers is that the proposed rates are the same in amount for similar distances whether the transportation is over one or more lines.

Practically the same advances as we are now considering have been made in the defendant's rates for transportation wholly within the state of Indiana and have been considered by the Indiana state commission, which has recommended to the carriers the adoption of a scale of rates somewhat higher than the old basis but permitting only

about one-quarter to one-third of the present interstate advances proposed.

The average value of a carload of drain tile is approximately \$100. One of the largest manufacturers in Indiana testified that of this amount 91½ per cent represented the cost of manufacturing and marketing, including about 25 per cent for freight, leaving a margin of \$8.50 profit. The average advance of approximately 20 per cent represented in these proposed tariffs would, it was stated, cut this profit in half. It was further contended that the advance would bear still more heavily upon the small manufacturer because of the increased cost incident to production in small quantities. Tile clay or shale is found in large quantities throughout practically all parts of central freight association territory and with ten or fifteen thousand dollars a factory can be started. The small producer usually sells to local trade, the proposed advances applicable to which are proportionately greater than for the long hauls. One of these smaller manufacturers presented a statement of all of his shipments (104 in number, of which 65 were interstate or to Illinois) for the four months January to April, 1912, which showed that he paid an average rate of 4.254 cents per 100 pounds. Under the proposed tariffs the average rate on those shipments would have been 5.264 cents, an increase of 23.74 per cent.

The tile manufacturers also contend that many of the rates marked as reductions in the suspended tariffs are not reductions in fact, many, for instance, being merely a specific publication of rates formerly included within intermediate clause applications under the fourth section. They contend further that probably the greater part of the actual reductions are from and to points between which there is no tile being shipped and never will be.

Following is a comparative list of rates, present and proposed, from Terre Haute, Ind., to destinations of actual shipments, with rates per ton per mile, together with a comparison of those rates with the rates recommended by the Indiana commission in its investigation above referred to:

From Terre Haute to—	Miles.	Rate per 100 pounds—cents.			Rate per ton-mile—cents.		
		Present.	Proposed.	Proposed by Indiana commission.	Present.	Proposed.	Proposed by Indiana commission.
Marshall, Ill.....	15.9	2.75	3.50	2.75	3.50	4.35	3.50
Martinsville, Ill.....	26.6	3.00	4.00	3.50	2.23	3.00	2.00
Kansas, Ill.....	31.6	3.00	4.50	4.13	2.00	2.80	2.58
Charleston, Ill.....	44.9	4.00	5.00	4.40	1.78	2.22	1.95
Arcola, Ill.....	52.0	4.00	5.00	4.50	1.54	2.00	1.62
Lawrenceville, Ill.....	64.2	5.00	6.00	5.23	1.56	2.00	1.62
Decatur, Ill.....	92.0	5.00	6.00	5.50	1.08	1.30	1.20

It seems to be established by the record that a lack of uniformity exists in these rates which should be removed by the adoption of a more uniform adjustment along the general lines suggested by the carriers. The tile interests concede, at least certain of them do, the justness of some increase in the general level of these rates. They differ, however, in their views as to the proper amount of that advance; and we are of opinion that their position is in the main well founded. It has been shown that drain tile is a commodity of low value and apparently unable to bear rates higher proportionately than the carriers recognize as proper and voluntarily charge on numerous articles of similar grade and value. Rates on brick, carried in the same tariffs, are generally lower in cents per hundred pounds, and with their higher minimum of 50,000 pounds (the minimum on tile is 30,000) the earnings per car are on the average but slightly higher than the earnings on tile. An examination of the table above would seem to show that the present rates are not far, if at all, below the limit of reasonableness on a commodity of this nature. Damage claims are not shown to be such as to materially influence the rate, and the equipment furnished is not only not always of the best, but is in many cases decidedly inferior.

We have no desire in any way to discourage the carriers in their efforts more equitably to equalize the present basis, but upon a careful analysis of the evidence we are impelled to the conclusion that the advances are excessive. We therefore find that the proposed rates on drain tile, as described in this report, are unreasonable and unjustly discriminatory, and the carriers will be directed to cancel them.

We are not to be understood as finally determining, however, that some increase in these rates would not be proper, and it is suggested that the parties confer with a view to arriving at a readjustment mutually acceptable to themselves and to the Commission, at the same time in substantial furtherance of the much desired objective of all concerned with respect to uniformity, and submit such rates to the Commission within 60 days for its consideration.

We come now to the question of sewer pipe. The record shows sewer pipe to be a commodity of considerably greater value than drain tile. While rates between other points were advanced and protested against, the testimony at the hearing was with particular reference to the rate from Mecca, Ind., to Chicago, Ill., which the carriers propose to advance from 6 to 8 cents per 100 pounds. The distance from Mecca to Chicago is 159.7 miles. The chief protest against this rate seems to arise from the fact that the present rate from Akron, Ohio, to Chicago of 12 cents, a distance of 352.7 miles, was not also advanced. It appears, however, that the latter rate is on the basis of

sixth class, where, the carriers contend, sewer pipe probably belongs. The increase from Mecca, which is to the Illinois intrastate basis, is to within 1 cent of the sixth-class rate of 9 cents. Therefore, assuming the sixth-class rates from these respective points of origin to Chicago to be properly adjusted relatively, the rate from Mecca would not appear to be out of line. The shipper who particularly protests against the rate from Mecca contends that the carriers, not having also increased the rate from Akron, which yields 6.8 mills per ton per mile, must consider that rate to be reasonable, compared to which the present rate from Mecca, which yields 7.5 mills, would seem to be about equitably adjusted considering the shorter haul, and that the proposed increase in this revenue to 1 cent would be clearly unreasonable. This shipper testifies that his company receives two-thirds as many shipments from Akron as it does from its own plant at Mecca, under the higher rate from Akron. As stated, sewer pipe is considerably more valuable than drain tile, and the testimony is to the effect that the profit on sewer pipe is proportionately greater.

Considering all the facts of record, we are not convinced that any injustice will be imposed upon the shippers of sewer pipe if the rates proposed in these tariffs are allowed to become effective. We therefore fail to find that the proposed rates on sewer pipe are unreasonable or unjustly discriminatory, and as to them the order of suspension will be vacated.

An order will be entered accordingly.

25 I. C. C.

No. 4598.

CHAMBER OF COMMERCE OF THE CITY OF BEAUMONT,
TEX.,

v.

TEXAS & NEW ORLEANS RAILROAD COMPANY ET AL.

FOURTH SECTION APPLICATION NO. 629.

Submitted August 30, 1913. Decided January, 7, 1913.

1. Rates for the transportation of potatoes and vegetables in carloads from St. Louis, Mo., to Beaumont, Tex., found unduly prejudicial as compared with rates on same commodities from St. Louis to Lake Charles, La., in so far as they exceed the differential resulting from the New Orleans combinations.
2. Carriers found to have justified the charging of lower rates for the transportation of potatoes, beans, and vegetables in carloads from St. Louis, Mo., to Lake Charles, La., than from St. Louis, Mo., to Beaumont, Tex., and accorded limited relief from the operation of the fourth section of the act.

T. W. Larkin for complainant.

J. H. Tallichet for Texas & New Orleans Railroad; Galveston, Harrisburg & San Antonio Railway Company; Houston & Texas Central Railroad Company; Houston East & West Texas Railroad Company; Houston & Shreveport Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; and Louisiana Western Railroad Company.

G. B. Wood for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

F. R. Dalzell and *T. J. Norton* for Santa Fe system lines.

C. K. Burnes and *G. H. Webb* for St. Louis & San Francisco Railroad Company; Beaumont, Sour Lake & Western Railroad Company; and International & Great Northern Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, representing the business interests of Beaumont, Tex., by petition, filed December 20, 1911, alleges that the rates on potatoes, dried beans, and vegetables in carloads from St. Louis, Mo., to Beaumont are unjustly discriminatory as compared with the rates on the same commodities from St. Louis to Lake Charles, La., and subject Beaumont to undue prejudice and disadvantage.

Fourth Section Application No. 629, filed by F. A. Leland, agent, on behalf of the defendants herein, and other carriers, in part asks for authority to continue lower rates on these commodities to Lake Charles than are contemporaneously in effect to Beaumont, and it will therefore be considered as a part of this proceeding in so far as it applies to the rates here involved.

Defendants' lines form through routes from St. Louis to Beaumont and Lake Charles via Kansas City, Mo., and junctions in Oklahoma and Texas. In order to reach Lake Charles all traffic via defendants' lines, with the exception of that which moves via the Kansas City Southern Railway, must be hauled through Beaumont. While Beaumont is not intermediate to Lake Charles via the Kansas City Southern, the mileage from St. Louis to both points is approximately the same. The joint through commodity rates, in cents per 100 pounds, from St. Louis to the points in question and the differentials in favor of Lake Charles are shown in the following table:

Commodity.	Beaumont.	Lake Charles.	Differential.
Potatoes.....	58	48	10
Beans.....	53	50	3
Vegetables.....	62	50	12

Complainant claims that by reason of these differentials in favor of Lake Charles the jobbers of Beaumont can not compete with those in Lake Charles in the distribution of these commodities to points in Louisiana, and considerable testimony in support thereof was introduced. This disadvantage is increased by reason of the fact that the distributing rates from Lake Charles to Louisiana points, prescribed by the Louisiana railway commission are relatively lower than the interstate rates from Beaumont to the same destination, but this adjustment is not attacked or directly involved in this proceeding.

On all these commodities the rate from St. Louis to Texas common point territory intermediate to Beaumont is 58 cents per 100 pounds. Except in cases where the New Orleans combination is lower, Beaumont is accorded Houston, Tex., rates, which are largely influenced by the competition of the steamship lines operating from New York; this, it appears, accounts for the 53-cent rate on beans to Beaumont, which is 5 cents lower than the rate to Texas common points.

Joint through rates from St. Louis to many Louisiana points, including Lake Charles, are generally made with relation to the rates from St. Louis to Shreveport, La., the rates to the various points of destination being graduated southward from Shreveport in an ascending scale. However, where this basis results in higher rates than those

made on New Orleans combination, the latter combination is employed in constructing the rates. Rates from St. Louis to New Orleans are influenced by the competition of the water carriers, and the rates from New Orleans to Lake Charles and other Louisiana points are prescribed by the Louisiana railway commission. The following table shows the rates in cents per 100 pounds from St. Louis to Beaumont and Lake Charles, based upon New Orleans combination:

	Potatoes.	Beans.	Vegetables.
Beaumont—			
To New Orleans.....	30	30	35
Beyond.....	27	27	27
Through.....	57	57	62
Lake Charles—			
To New Orleans.....	30	30	35
Beyond.....	20	20	20
Through.....	50	50	55
Differential.....	7	7	7

It will be noted that the differential of 7 cents in favor of Lake Charles is due to the fact that the factor beyond New Orleans is in each case 7 cents higher to Beaumont than to Lake Charles.

Defendants are in the position of meeting the rates fixed by the direct lines. The record shows that very little of the traffic of the kind here involved is hauled by defendants, the movements via their lines being infrequent and spasmodic. The short-line distance from St. Louis to Lake Charles via New Orleans is 784 miles. The shortest route formed by the lines of any of the defendants operating through Beaumont to Lake Charles is 956 miles, or about 22 per cent greater. The reasonableness of the rates is not questioned, and certainly Lake Charles has a natural or geographical advantage of which it should not be deprived. In the absence of commodity rates class-C rates are applied on these commodities; the class-C rate from St. Louis to Lake Charles is 51 cents and to Beaumont 58 cents.

Upon consideration of the facts disclosed by the record, we are of the opinion and find that the present rates for the transportation of potatoes and vegetables in carloads from St. Louis to Beaumont are unduly prejudicial as compared with rates to Lake Charles, and that for the future the differentials in favor of Lake Charles and against Beaumont should not exceed the differentials that would result from the application of rates on the basis of New Orleans combination to both points. We are further of the opinion that the carriers should be relieved from the operation of the fourth section of the act, and permitted to charge lower rates for the transportation of potatoes, dried beans, and vegetables, in carloads, from St. Louis to Lake

Charles, than from St. Louis to Beaumont, provided the differential in favor of Lake Charles and against Beaumont does not exceed the differential that would result from the application of rates on the basis of New Orleans combination to both points.

Orders will be entered in accordance with the conclusions herein announced.

No. 4170.

JOHN J. BAGLEY & COMPANY

v.

PERE MARQUETTE RAILROAD COMPANY ET AL

Submitted April 22, 1912. Decided January 7, 1913.

Rating of third class, with a minimum of 24,000 pounds, subject to rule 27 of official classification, established for the transportation of long-cut, fine-cut, cut-plug, and granulated smoking tobaccos in carloads from Detroit, Mich., to New York, N. Y.

Beaumont, Smith & Harris and Eldon Wright for complainant.

D. P. Connell, O. E. Butterfield, and Clyde Brown for New York Central & Hudson River Railroad Company; Michigan Central Railroad Company; and Lake Shore & Michigan Southern Railway Company.

L. C. Stanley for Grand Trunk Railway Company of Canada and Grand Trunk Western Railway Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant is a corporation engaged in the manufacture and sale of tobacco at Detroit, Mich. By petition, filed June 9, 1911, it alleges that on account of the failure of defendants to provide a carload rating on long-cut, fine-cut, cut-plug, and granulated smoking tobaccos it is compelled to pay an excessive and unreasonable rate for the transportation of these commodities from Detroit, Mich., to New York, N. Y. The establishment of a reasonable carload rating is asked.

On the commodities involved, which complainant usually ships in wooden or fiber-board boxes, the official classification provides first-class rating, applicable to any quantity. At New York City complainant has a warehouse, from which shipments are made in small

lots to various points in the New England states. Its shipments from Detroit to this New York branch aggregate nearly one million pounds per annum, which would amount to about forty-one 24,000-pound carloads.

Complainant calls attention to the fact that on plug tobacco in carloads official classification provides fourth-class rating, with a minimum weight of 30,000 pounds, and that this is made use of by the American Tobacco Company in shipping from Louisville, Ky., and St. Louis, Mo., to New York. It is suggested by complainant that competitive conditions on smoking tobacco are somewhat intensified by reason of the maintenance of the carload rating on plug tobacco, but this is denied by defendants.

The fourth-class rate applicable on plug tobacco from Detroit to New York is 27½ cents, and the first-class rate applicable on smoking tobacco is 58½ cents. Complainant seeks the establishment of a rating on the latter, not higher than third class. The third-class rate from Detroit to New York is 39 cents.

It is testified that smoking tobacco and plug tobacco are of about the same relative value, but that the former is more liable to damage principally because it is contained in glass jars, or cloth or paper bags, packed in ordinary wooden or fiber-board cases, while the latter is pressed into substantial wooden boxes. Smoking tobacco is more bulky than plug tobacco, but complainant states that 24,000 pounds can be loaded into a 36-foot car. Under the terms of official classification carload freight must be loaded and unloaded by the shipper or owner, and for that reason alone the cost to the carrier would be considerably less than in case of less than carloads. The western classification provides third-class rating, with a minimum of 24,000 pounds.

Defendant contends that as smoking tobacco is not sold in carloads, and as there is no general carload movement, there is no necessity for the establishment of a carload rating. To this complainant replies that the same may be said as to a number of carload ratings provided in the official classification.

Upon consideration of all the facts and circumstances of record we are of the opinion and find that the present rating applicable to shipments of long-cut, fine-cut, cut-plug, and granulated smoking tobaccos in carloads from Detroit to New York City, is unreasonable, and that for the future it should not be higher than third class, with a minimum weight of 24,000 pounds, subject to rule 27 of official classification. An order will be entered accordingly.

25 L. C. C.

No. 4496.

DEWEY BROTHERS COMPANY

v.

LOUISVILLE, HENDERSON & ST. LOUIS RAILWAY COMPANY ET AL.

Submitted May 1, 1912. Decided January 7, 1913.

Rate of 21 cents per 100 pounds for the transportation of distillers' dried grains in carloads from Stanley, Ky., to Akron, Ohio, found to have been unreasonable and unjustly discriminatory to the extent that it exceeded 15 cents. Reparation awarded.

J. S. Dewey for complainant.

R. A. Miller for Louisville, Henderson & St. Louis Railway Company.

Edward Barton and *O. S. Lewis* for Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation engaged in the grain business at Blanchester, Ohio, alleges by petition, filed October 18, 1911, that an unreasonable and unjustly discriminatory rate was charged by defendants for the transportation of a carload of distillers' dried grains, weighing 40,000 pounds, from Stanley, Ky., to Akron, Ohio. Reparation is asked.

The shipment was made March 1, 1910, and moved via Owensboro and Louisville, Ky. Charges in the sum of \$84 were collected, based upon a rate of 21 cents per 100 pounds, made up of the local rate of 4 cents from Stanley to Owensboro, and the sixth-class rate of 17 cents, from Owensboro to Akron.

Complainant calls attention to the fact that from Vincennes, Ind., to Buffalo, N. Y., the rate is 11½ cents and to Akron 11 cents, from Louisville, Ky., to Buffalo 11 cents, and from St. Louis to Buffalo, 13½ cents, and that the hauls upon these rates are equal to or greater than that here involved.

Stanley is a local station on the line of the Louisville, Henderson & St. Louis Railway between Henderson and Owensboro, Ky., and generally no through rates are published from local points on said line

to central freight association territory, the usual basis being the combination of intermediate rates based on Henderson, Owensboro, Louisville, or Evansville. Owing to the difference in density of traffic and dissimilarity in other conditions obtaining in central freight association territory, defendants contend that the rates above referred to can not fairly be used as comparisons in determining the reasonableness of rates from points south of the Ohio River. However, from Henderson and Owensboro, and also from Stanley, complainant shows that the rate to Buffalo is 15 cents. We note that this rate applies not only to Buffalo, but that it is blanketed over the entire Buffalo-Pittsburgh territory, and the maintenance of this adjustment is unexplained upon the record. The rate from Stanley to Philadelphia, Pa., is 21½ cents, which is but one-half cent higher than the rate charged to Akron.

Upon consideration of all the facts and circumstances we are of the opinion and find that the rate of 21 cents charged on this shipment from Stanley to Akron was unreasonable and unjustly discriminatory to the extent that it exceeded 15 cents, which will be prescribed as a reasonable maximum rate for the future.

We further find that complainant made the shipment in accordance with the above statement of facts and paid charges thereon at the rate found herein to have been unreasonable; that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rate above found reasonable; and that it is therefore entitled to an award of reparation in the sum of \$24, with interest thereon from April 1, 1910.

On May 1, 1912, a hearing was had upon fourth section application No. 1065, in so far as it concerns traffic from Stanley to Akron, but in view of the fact that our finding is not based upon the rate from Henderson, the farther distant point to which Stanley is intermediate, it is not necessary to here pass upon the merits of said application. An order will be entered in accordance with the findings herein.

25 I. C. C.

No. 4367.

SEABOARD REFINING COMPANY, LIMITED,
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.

Submitted May 13, 1912. Decided January 7, 1913.

Error of Texas & Pacific Railway Company, in refusing to issue regular bill of lading, as required by its tariff, found to have resulted in the exaction of unjust and unreasonable charges for the transportation of cottonseed oil from Louisiana and Texas points to Chicago, Ill., and Cleveland, Ohio. Reparation awarded.

S. R. Barnett and E. J. George for complainant.

E. L. Sargent for Texas & Pacific Railway Company.

Frank W. Gwathmey for Alabama Great Southern Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; New Orleans & Northeastern Railroad Company; and Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainant, a corporation with offices at New Orleans and refinery at Gretna, La., is engaged in refining and selling cottonseed oil. Its petition, filed September 5, 1911, alleges that through the enforcement by defendant Texas & Pacific Railway Company of certain regulations for the use of track receipts or switching tickets in handling refined oil from Gretna to New Orleans for delivery to connections, it was deprived of the benefit of through rates from points of origin in Texas and Louisiana to Chicago, Ill., and Cleveland, Ohio, on cottonseed oil refined in transit at Gretna, and consequently has been subjected to the payment of unjust and unreasonable rates of transportation. Reparation is asked.

Subsequent to the filing of the petition it developed that the Alabama Great Southern Railroad Company; Cincinnati, New Orleans & Texas Pacific Railway Company; and the New Orleans & Northeastern Railroad Company did not participate in the movement of any of the shipments involved.

Gretna, the refinery point, is in Jefferson parish on the west bank of the Mississippi River and is outside the municipality of New Orleans, which is in Orleans parish on the east bank of the river. All of the oil included in this complaint, originating at Texas and Louisiana points and refined at Gretna, was switched by the Texas & Pacific Railway from Gretna to New Orleans, a distance of about

five miles, and was there delivered either to the Illinois Central for transportation to Chicago or to the Louisville & Nashville for transportation to Cleveland. For this service the Texas & Pacific assessed its regular switching charges, which were absorbed by the Illinois Central or the Louisville & Nashville.

Sixteen cars were thus handled during the period, December 23, 1909, to February 19, 1910, 15 moving from New Orleans to Chicago via the Illinois Central, and 1 from New Orleans to Cleveland via the Louisville & Nashville. Of the Chicago cars, 1 originated at Alexandria, La., 2 at Shreveport, La., and 12 at Texas points, taking Texas common point rates. The Cleveland car likewise originated at a Texas point, taking the Texas common point rate.

At the time of movement the through rates from Alexandria and Shreveport to Chicago were 34 cents and 32 cents per 100 pounds, respectively, while from the Texas points the through rates were, to Chicago 41 cents and to Cleveland 49 cents, respectively. The rates charged were the sums of the intermediate rates to and from New Orleans as follows:

To New Orleans from—	Cents.
Alexandria, La.....	14
Shreveport, La.....	20
Texas points.....	30
From New Orleans to—	
Chicago, Ill.....	27
Cleveland, Ohio.....	32

The reparation claimed consists of the difference between the joint rates and the combination rates, plus \$5 per car stop-over charge, the aggregate being \$1,177.40.

The tariffs, naming the through rates from both Louisiana and Texas points, authorized refining in transit at Gretna, subject to certain conditions, one of which was:

Shipments must pay full local rates into points at which stopped for the "in transit" privileges, and when subsequently re shipped therefrom via the T. & P. Ry. the through rate from point of origin to final destination, plus \$5 per car, will be protected through the freight claim department upon presentation of original paid expense bills showing amount of charges paid into point at which stopped, together with copies of bills of lading, showing final destination of the outbound movement.

Under this provision it had been the practice of the Texas & Pacific for several years previous to the time of these transactions to issue bills of lading at Gretna for outbound shipments of refined oil, transporting such shipments to New Orleans, when routed via other carriers thence, and delivering to connections on transfer slips on which original points of shipment were shown, together with the proportions of the through rates from points of origin due such connections. When the shipments here under discussion were tendered

to the Texas & Pacific, the yardmaster of that line, working under instructions from his traffic department, declined to sign bills of lading, but issued, instead, Texas & Pacific track receipts, or switching tickets, nonnegotiable instruments used merely in acknowledgment of possession of cars intended for switch movement. In consequence, complainant was forced to take out Illinois Central or Louisville & Nashville bills of lading at New Orleans.

Claims were filed with the Texas & Pacific freight claim department in accordance with the rule quoted and were declined on the ground that the rule required reshipment via the Texas & Pacific and presentation of that company's bills of lading for the outbound movement; while in these instances it was claimed the Texas & Pacific was not offered the shipments and issued no bills of lading, but merely handled the cars in switch movement.

It was admitted by a witness for the Texas & Pacific that the instructions to refuse to issue bills of lading for oil handled under the refining-in-transit basis were given under a misapprehension, the intent having been to provide for the issuance of track receipts or switching tickets only on cars switched to connections for which the local bills of lading of such connections would be issued; that connecting lines would not issue through bills of lading under the transit arrangements of the Texas & Pacific, and that for this reason it had been the custom of the Texas & Pacific to issue its bills of lading and then deliver to connections on through billing.

Witness further testified that as Texas & Pacific employees and power performed the service from Gretna to New Orleans the cars, in his estimation, were "reshipped" via that line in the ordinary acceptance of that term, and that as the Texas & Pacific refused to issue the documents which might technically be required by the rule of the tariff it was responsible for complainant's difficulty and ought to make the refund.

The rule did not specify that the Texas & Pacific should receive a "line haul" on the outbound product, nor did it in terms provide for surrender of Texas & Pacific bills of lading for outbound product. It had been the practice previously to issue such bills of lading, and we note that subsequently the yardmaster's instructions were rescinded and the old practice was resumed. As a matter of fact, during the time this complainant was denied regular bills of lading such forms were being signed for the Southern Cotton Oil Company, so that the practice was not uniform. The effect of the position taken by the Texas & Pacific was to make the movements Gretna or New Orleans to Chicago and Cleveland entirely new movements and to enforce the application of the tariff rates to and from New Orleans. By its error this carrier denied complainant the benefit of lawfully published tariff provisions.

We find therefore that complainant was charged unjust and unreasonable rates in so far as such rates exceeded the through rates from original points of shipment in Louisiana and Texas to Chicago and Cleveland plus \$5 per car stop-over at Gretna.

We further find that complainant made certain shipments and paid charges thereon at the rates herein found to have been unreasonable; and that it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid at the rates herein found reasonable. However, all the expense bills covering these shipments are not in evidence, and we are unable to determine the amount of reparation to which complainant is entitled. The parties should therefore submit an agreed statement and upon approval by the Commission an order will be entered for reparation in the amount found due under our findings herein.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT
DURING THE TIME COVERED BY THIS VOLUME.

3280. *IN RE ALLEGED DEPARTURES FROM TARIFF RATES BY THE HARDWICK & WOODBURY RAILROAD COMPANY.*—Departing from tariff rates upon certain shipments of granite and coal. *J. H. Marble* and *S. H. Smith* for Interstate Commerce Commission. *W. B. C. Stickney, W. A. Dutton, G. H. Bickford,* and *E. R. Fletcher* for respondent. October 15, 1912. Dismissed.

3643. *CENTRAL TRUST COMPANY OF ILLINOIS, TRUSTEE, THE AGAR PACKING COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.*—Rates on tallow from Des Moines, Iowa, to Wichita, Kans. *M. L. Hurd* for complainant. *W. F. Dickinson* for defendant. October 22, 1912. Transferred to Special Docket for adjustment.

3749. *CURTIS SASH & DOOR COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Rates on sash, doors, and molding from Sioux City, Iowa, to Belle Fourche, S. Dak. *G. T. Bell* for complainant. *C. C. Wright* and *J. B. Sheean* for defendants. November 5, 1912. Transferred to Special Docket for adjustment.

3871. *HALEY & LANG COMPANY ET AL. v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.*—Rates and refrigeration charges on peaches from Horatio, Ark., to Worthington, Minn., and Sheldon, Iowa. *G. T. Bell* for complainants. *R. B. Scott, J. B. Sheean,* and *H. M. Pearce* for defendants. December 2, 1912. Transferred to Special Docket for adjustment.

4065. *FLORIDA CITRUS EXCHANGE v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.*—Rates on citrus fruit from Florida to beyond Potomac Yards Gate. *L. C. Massey* and *T. P. Warlow* for complainant. *R. W. Moore* for defendants. October 15, 1912. Dismissed; complaint satisfied.

4238. *STRATFORD COAL YARD v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Rates on millet seed from Stratford, Tex., to Atchison, Kans. *C. F. Rudolph* for complainant. *W. F. Dickinson* and *W. T. Hughes* for defendants. November 29, 1912. Transferred to Special Docket for adjustment.

4248. *ROBINSON CLAY PRODUCT COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—Rates on stoneware from East Akron, Ohio, to London, Ontario, Canada. *A. Hill* for complainant. *B. S. Warren* and *J. A. Twohey* for defendants. November 5, 1912. Transferred to Special Docket for adjustment.

4292. **BRITTINGHAM & YOUNG COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Rates on lumber from Merrill, Wis., to Arlington Heights, Ill. *W. R. Curkett* for complainant. *J. N. Davis* and *J. M. Davis* for defendants. January 6, 1913. Dismissed for want of prosecution.

4316. **JAMES R. ANDREWS v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.**—Rates on lumber from Osier, Mich., to Milwaukee, Wis., and Chicago, Ill. *I. C. Jennings* for complainant. *C. C. Wright* for defendant. January 6, 1913. Dismissed for want of prosecution.

4318. **BRITTINGHAM & YOUNG COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.**—Rates on lumber from Wisconsin points to Chicago, Ill., Dubuque and Calmar, Iowa, and Winona and St. Paul, Minn. *W. R. Curkett* for complainant. *J. N. Davis* and *J. M. Davis* for defendant. October 15, 1912. Dismissed for want of prosecution.

4365. **FITZSIMMONS-PALMER COMPANY v. FLORIDA EAST COAST RAILWAY COMPANY ET AL.**—Rates on tomatoes from Hallandale, Fla., to Duluth, Minn. *W. G. Baldwin* for complainant. *A. St. C. Abrams*, *C. B. Northrop*, *J. B. Sheeass*, *C. C. Wright*, and *R. W. Moore* for defendants. January 6, 1913. Dismissed; overcharge of \$22.50 refunded.

4489. **SNOW LUMBER COMPANY v. PHILADELPHIA & READING RAILWAY COMPANY ET AL.**—Rates on building materials from High Point, N. C., to Philadelphia, Pa. *H. E. Hanes* for complainant. *C. Heebner*, *C. B. Northrop*, *H. W. Bikle*, and *G. S. Patterson* for defendants. November 5, 1912. Transferred to Special Docket for adjustment.

4493. **AMERICAN LUMBER COMPANY v. ATLANTIC COAST LINE RAILROAD COMPANY ET AL.**—Rates on lumber from Drum Hill, N. C., to Baltimore, Md. *J. R. Walker* for complainant. *H. W. Bikle* for defendants. January 21, 1913. Transferred to Special Docket for adjustment.

4516. **CHECOTAH COTTON OIL COMPANY ET AL. v. MISSOURI, KANSAS & TEXAS RAILWAY COMPANY ET AL.**—Rates on burlap bags from New Orleans, La., to Checotah, Okla. *W. S. Barnes* for complainants. *E. C. D. Marshall* and *J. M. Bryson* for defendants. December 3, 1912. Transferred to Special Docket for adjustment.

4570. **EAGLE PASS LUMBER COMPANY ET AL. v. NATIONAL RAILWAYS OF MEXICO ET AL.**—Rates on window glass and hardware from Dallas, San Antonio, and Houston, Tex., to Ciudad Porfirio Diaz, State of Coahuila, Mexico. *B. V. King* for complainants. *J. R. Christian* and *H. A. Scandrett* for defendants. October 15, 1912. Dismissed; complaint satisfied.

4612. **ARCADE MANUFACTURING COMPANY v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.**—Rates on

glassware from Dunkirk, Ind., to Freeport, Ill. *O. M. Rogers* and *W. A. Ahern* for complainant. *A. P. Burgwin*, *J. Stillwell*, *O. W. Dynes*, and *W. E. Prendergast* for defendants. October 15, 1912. Dismissed; complaint satisfied.

4685. *M. RUMELY COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.*—Rates on agricultural implements from Laporte, Ind., to Genoa, Colo. *W. W. Tallant* for complainant. *W. F. Dickinson* and *W. T. Hughes* for defendants. December 3, 1912. Transferred to Special Docket for adjustment.

4710. *LITTLE ROCK CHAMBER OF COMMERCE v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY.*—Rates on coal from southern Illinois to Little Rock and Argenta, Ark. *W. M. Lewis* for complainant. *F. G. Wright* and *B. M. Flippin* for defendant. December 10, 1912. Dismissed on motion of complainant.

4712. *AMERICAN TYPE FOUNDERS COMPANY v. ST. LOUIS MERCHANTS BRIDGE TERMINAL RAILWAY COMPANY ET AL.*—Rates on antimonial lead from Granite City, Ill., to Minneapolis, Minn. *Western Freight Traffic Association* by *H. Miller*, *Vice President*, for complainant. *W. F. Dickinson*, *B. G. Brown*, and *O. W. Dynes* for defendants. October 15, 1912. Dismissed; complaint satisfied.

4725. *JOB S. WALKER v. NORFOLK & WESTERN RAILWAY COMPANY.*—Rates on lumber from Devon, W. Va., to certain points in Ohio. *H. G. Binns* for complainant. *R. W. Moore* for defendant. October 15, 1912. Dismissed on motion of complainant.

4748. *JOB S. WALKER v. NORFOLK & WESTERN RAILWAY COMPANY ET AL.*—Rates on lumber from Devon, W. Va., to certain points in Ohio, Indiana, Illinois, and Michigan. *H. G. Binns* for complainant. October 15, 1912. Dismissed on motion of complainant.

4755. *INDIANAPOLIS FREIGHT BUREAU v. CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Minimum weights on furniture from Chicago., Ill., Cincinnati, Ohio, Louisville, Ky., and Evansville and Indianapolis, Ind., to Oklahoma. *E. E. Gates*, *J. Keavy*, and *F. E. Matson* for complainant. *O. E. Butterfield*, *E. Barton*, *J. W. Allison*, *O. S. Lewis*, *W. F. Dickinson*, *S. H. Johnson*, *W. T. Hughes*, *J. L. West*, *J. G. Williams*, *C. J. Rizey*, and *B. J. Rowe* for defendants. December 11, 1912. Dismissed on motion of complainant.

4764. *UNITED STATES v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.*—Passenger rates from Kansas City, Mo., to Norfolk, Va., and return. *Miller, Crowell & Wiltberger* for complainant. *F. G. Wright*, *D. P. Connell*, *C. B. Northrop*, *A. M. Bull*, *C. A. Kline*, and *R. B. Scott* for defendants. November 12, 1912. Dismissed on motion of complainant.

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4849. **GLOBE COAL COMPANY v. NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.**—Rates on coal from Mayfield, Pa., to Ecorse, Mich. *E. B. Wilkinson* for complainant. *J. F. Finerty, Jr.*, for defendants. October 15, 1912. Dismissed on motion of complainant.

4857. **COLORADO PORTLAND CEMENT COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Rates on certain machinery and hardware articles from Cudahy and South Milwaukee, Wis., Chicago, Ill., and Fullerton, Pa., to Portland, Colo. *G. M. Stephen* for complainant. *D. L. Meyers, E. N. Clark, J. C. Jeffery, C. C. Wright, A. H. Lossow, E. H. Wood, H. A. Scandrett, J. G. Wilson, W. F. Dickinson,* and *W. T. Hughes* for defendants. November 12, 1912. Dismissed on application of complainant.

4858. **WALTER BREWING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Charge on automobile trucks from Allentown, Pa., to Pueblo, Colo. *G. M. Stephen* for complainant. *T. J. Norton* and *D. L. Meyers* for defendants. October 15, 1912. Dismissed on motion of complainant.

4862. **HEALY & TOWLE v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL.**—Rates on horses from Redfield and Mansfield, S. Dak., to Wausau, Wis. *North Western Freight Shippers Bureau* for complainant. *C. C. Wright* and *A. H. Lossow* for defendants. November 12, 1912. Dismissed for want of prosecution.

4865. **PARTRIDGE & WILCOX v. NATIONAL EXPRESS COMPANY ET AL.**—Charge on linen goods from New York, N. Y., to Aberdeen. Wash. *E. A. Wilcox* for complainant. *T. N. Smith* and *E. E. Bush* for defendants. November 12, 1912. Dismissed; overcharge of \$2.25 refunded.

4878. **PILLSBURY FLOUR MILLS COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.**—Misrouting of flour from Minneapolis, Minn., to Lebanon, Pa. *W. H. Perry* for complainant. *R. B. Scott, G. H. Crosby, G. P. Lyman,* and *E. P. Bates* for defendants. October 15, 1912. Dismissed; alleged misrouting due to complainant's own error.

4891. **MINNEAPOLIS THRESHING MACHINE COMPANY v. MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY ET AL.**—Charges on threshing machinery from Hopkins, Minn., to Pratt, Kans. *J. A. Hoep* and *J. H. McDonald* for complainant. *W. H. Bremner* and *S. G. Lutz* for defendants. November 12, 1912. Dismissed; complaint satisfied.

4926. **LEWIS-VIDGER-LOOMIS COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.**—Rates on bananas from Mobile, Ala., and New Orleans, La., to Bismarck, N. Dak. *L. A. Knudsen* for complainant. *O. W. Dynes, A. S. Brandeis, R. W. Moore,* and *D. F. Lyons* for defendants. October 15, 1912. Dismissed on motion of complainant.

4936. **SUPERIOR SUPPLY COMPANY v. NORFOLK & WESTERN RAILWAY COMPANY ET AL.**—Rates on cement from Bluefield, W. Va., to Superior, Ohio. *G. M. Stephen* for complainant. *E. F. Drake* and *R. W. Moore* for defendants. October 15, 1912. Dismissed on motion of complainant.

4963. **JAMES B. CLOW & SONS v. CHICAGO GREAT WESTERN RAILROAD COMPANY ET AL.**—Rates on iron fountains from Chicago, Ill., to Salt Lake City, Utah. *O. M. Rogers* for complainant. *D. L. Meyers* for defendants. October 15, 1912. Dismissed on motion of complainant.

4986. **GEM CITY GROCERY COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.**—Rates on canned corn from Blair, Nebr., to Laramie, Wyo. *R. L. Varney* for complainant. *J. B. Sheean*, *N. H. Loomis*, and *H. A. Scandrett* for defendants. October 15, 1912. Dismissed; complaint satisfied.

5002. **S. & F. UHLMANN ET AL. v. SOUTHERN PACIFIC COMPANY ET AL.**—Rates on hops from California and North Pacific points to points described in tariff I. C. C. 926. *Ehrich & Wheeler* for complainants. *H. A. Taylor*, *T. H. Burgess*, *O. W. Dynes*, *T. J. Norton*, *R. Dunlap*, *H. A. Scandrett*, *C. W. Durbrow*, *G. D. Squires*, *A. P. Burgwin*, *L. E. Hinkle*, *C. Brown*, and *W. C. Coleman* for defendants. January 6, 1913. Dismissed on motion of complainants.

5020. **E. F. SANGUINETTI v. SOUTHERN PACIFIC COMPANY.**—Rates on beet sugar from Oxnard and Los Alamitos, Cal., to Yuma, Ariz. *G. M. Stephen* for complainant. *H. A. Scandrett*, *C. W. Durbrow*, and *G. D. Squires* for defendant. October 15, 1912. Dismissed on motion of complainant.

5032. **REO MOTOR CAR COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY.**—Rates on iron shearing machine from Buffalo, N. Y., to Lansing, Mich. *G. M. Stephen* for complainant. *O. E. Butterfield* for defendant. November 12, 1912. Dismissed on motion of complainant.

5046. **JONES BROTHERS COMPANY v. MONTPELIER & WELLS RIVER RAILROAD ET AL.**—Rates on monumental granite from Baile, Vt., to Altenheim, Ill. *S. W. Jones* for complainant. *F. W. Morse*, *A. W. Lawrence*, *E. J. Rich*, and *A. H. Bright* for defendants. November 12, 1912. Dismissed on motion of complainant.

5049. **KELLOGG SWITCHBOARD & SUPPLY COMPANY v. CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY ET AL.**—Rates on telephone poles from North Escanaba, Mich., to Russellville, Ind. *G. M. Stephen* for complainant. *S. R. Lewis*, *Bright & Kennett*, and *O. E. Butterfield* for defendants. November 12, 1912. Dismissed on motion of complainant.

5071. **A. M. McLAUGHLIN & SON v. NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY ET AL.**—Rates on salt from Louisville, Ky., and

Cleveland, Ohio, to Fayetteville, Tenn. *G. M. Stephen* for complainant. *A. S. Brandeis, N. W. Proctor, R. W. Moore, and O. E. Butterfield* for defendants. January 6, 1913. Dismissed on motion of complainant.

5106. WASHINGTON MILL COMPANY *v.* OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY ET AL.—Rates on box shooks from Spokane, Wash., to Ceres, Turlock, and Modesto, Cal. *E. D. King* for complainant. *H. A. Scandrett, A. C. Spencer, and W. F. Herrin* for defendants. January 6, 1913. Dismissed on motion of complainant.

5108. COLORADO MOLINE PLOW COMPANY *v.* CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.—Rates on agricultural implements and vehicles from Freeport, Ill., to Denver, Colo. *C. W. Durbin* for complainant. *W. F. Dickinson, O. W. Dynes, and A. P. Humburg* for defendants. November 12, 1912. Dismissed on motion of complainant.

5139. J. C. KIRKPATRICK, ADMINISTRATOR, *E. C. Norton, Deceased, v.* CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.—Rates on telephone poles from Daggett, Mich., to Frazeysburg, Ohio. *G. M. Stephen* for complainant. *G. C. Wright and Wilson & Rector* for defendants. December 2, 1912. Dismissed; complaint satisfied.

5157. SWEENEY-LYNES & COMPANY *v.* BOSTON & MAINE RAILROAD.—Terminal privileges at Warren Bridge, Boston, Mass. *D. P. Sweeney* for complainant. *E. J. Rich* for defendant. December 10, 1912. Dismissed; complaint satisfied.

5212. WICHITA BUSINESS ASSOCIATION, TRAFFIC BUREAU *v.* ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.—Rates on candies and crackers from Wichita, Kans., to Springfield, Mo. *M. E. Casto* for complainant. *M. L. Clardy, H. G. Herbel, F. G. Wright, F. H. Wood, and E. A. Haid* for defendants. November 12, 1912. Dismissed; complaint satisfied.

5260. CENTRAL PENNSYLVANIA LUMBER COMPANY *v.* TIONESTA VALLEY RAILWAY COMPANY ET AL.—Rates on lumber from Sheffield, Pa., to Germantown, N. Y. *J. P. Strong* for complainant. *C. Brown* for defendants. December 10, 1912. Dismissed; complaint satisfied.

5261. WRIGHT & WILHELMY COMPANY *v.* CHICAGO GREAT WESTERN RAILROAD COMPANY.—Rates on woven wire fence from Dekalb, Ill., to Omaha, Nebr. *O. M. Rogers* for complainant. *Winston, Payne, Strawn & Shaw* for defendant. January 6, 1913. Dismissed on motion of complainant.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN FORMAL
BUT UNREPORTED DECISIONS DURING THE TIME COVERED BY
THIS VOLUME.

4100 (U. R. No. 716). *JOSEPH SCHLITZ BREWING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rates on empty beer kegs from Needles, Cal., and Searchlight, Nev., to Milwaukee, Wis. *C. J. Bertschy* for complainant. *O. W. Dynes* for Chicago, Milwaukee & St. Paul Railway Company. November 11, 1912. Reparation awarded for \$373.76.

4295 (U. R. No. 717). *PATENT VULCANITE ROOFING COMPANY, OF ALABAMA, v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Unlawful charge on roofing paper from Chicago, Ill., to Picayune, Miss. *J. T. Slatter* for complainant. *R. Walton Moore* and *M. P. Callaway* for defendants. November 11, 1912. Reparation awarded for \$20.28.

4324 (U. R. No. 718). *GUS E. RUHMANN v. SOUTHERN PACIFIC COMPANY ET AL.*—Rates on wire baskets and steel furnaces from Schulenburg, Tex., to points in southeastern territory not found unreasonable. *Gus E. Ruhmann* for complainant in person. *H. A. Scandrett*, *W. A. Northcutt*, and *A. S. Brandeis* for defendants. November 11; 1912. Complaint dismissed.

4378 (U. R. No. 719). *WISCONSIN CARRIAGE COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable rates on buggy bodies from Lowell, Mich., to Janesville, Wis. *G. W. Wadsworth* for complainant. *C. C. Wright* and *A. H. Lossow* for Chicago & North Western Railway Company. October 7, 1912. Reparation awarded for \$62.16.

4408 (U. R. No. 720). *NATIONAL PICKLE & CANNING COMPANY v. BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.*—Rate on tomato pulp from Montrose and Keokuk, Iowa, to St. Louis, Mo., not found unreasonable. *O. M. Rogers* for complainant. *R. B. Scott* for Chicago, Burlington & Quincy Railroad Company. November 11, 1912. Complaint dismissed.

4526 (U. R. No. 721). *E. P. STACY & SONS v. MISSOURI PACIFIC RAILWAY COMPANY ET AL.*—Unlawful charges on apples from Griswold, Iowa, to Heron Lake and St. James, Minn., and from Centralia, Mo., to Slayton, Minn. *F. A. McGillis* for complainant. *W. F. Dickinson*, *W. T. Hughes*, *Fred G. Wright*, *H. G. Herbel*, *R. B. Scott*, *R. L. Kennedy*, and *S. E. Stohr* for defendants. November 11, 1912. Reparation awarded for \$30.87.

4546 (U. R. No. 722). *BOECKELER LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY*.—Unreasonable rate on lumber from St. Louis, Mo., to Upton, Ind. *A. F. Versen* for complainant. No appearance for defendant. November 11, 1912. Award of reparation deferred pending presentation of necessary data.

4562 (U. R. No. 723). *HASSALO ENGINEERING COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.*—Rate on cast-iron radiators from Buffalo Junction, N. Y., to Portland, Oreg., not found unreasonable. *A. J. Parrington* for complainant. *C. A. Hart* for defendants. November 11, 1912. Complaint dismissed.

4780 (U. R. No. 724). *HERMAN H. HETTLER LUMBER COMPANY v. NEW ORLEANS & NORTHEASTERN RAILROAD COMPANY ET AL.*—Excessive weight on lumber from Richardson, Miss., to Michigan City, Ind. *W. J. Vollmer* for complainant. *R. Walton Moore, M. P. Callaway, and L. W. Watson* for defendants. November 11, 1912. Reparation awarded for \$2.40.

3655 (U. R. No. 725). *C. C. FOLLMER & COMPANY v. DULUTH, SOUTH SHORE & ATLANTIC RAILWAY COMPANY ET AL.*—Amount assessed on shingles from Avon, Wash., to Astoria, N. Y., in excess of that authorized by tariffs. *C. C. Follmer* for complainant. *M. C. Kimball and J. H. Campbell* for defendants. November 11, 1912. Reparation awarded for \$84.48.

3761 (U. R. No. 726). *IDAHO WHOLESALE GROCERY COMPANY v. GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.*—Unreasonable rates on rice from points in Texas and Louisiana to Pocatello, Idaho. *J. D. Skeen* for complainant. *H. A. Scandrett and J. V. Lyle* for defendants. November 11, 1912. Reparation awarded for \$204.40.

4180 (U. R. No. 727). *GROTE-RANKIN COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rates on furniture from Chicago, Ill., to Spokane, Wash., caused by car furnished being of higher minimum than car ordered. *E. D. King* for complainant. *Hamblen & Gilbert and H. P. Suing* for Oregon-Washington Railroad & Navigation Company. November 11, 1912. Reparation awarded for \$31.10.

4569 (U. R. No. 728). *U. S. PORTLAND CEMENT COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.*—Rates on cement from Yocemento, Kans., to Missoula, Mont., not found unduly prejudicial or discriminatory. *I. M. Yost* for complainant. *R. W. Blair and G. H. Crosby* for defendants. November 11, 1912. Complaint dismissed.

4609 (U. R. No. 729). *BRODERICK & BASCOM ROPE COMPANY v. WABASH RAILROAD COMPANY ET AL.*—Unreasonable rate on wire-rope reels from St. Louis, Mo., to Seattle, Wash. *O. M. Rogers* for com-

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plainant. *J. N. Davis* for defendants. October 8, 1912. Reparation awarded for \$264.14.

4126 (U. R. No. 730). *MILWAUKEE-WESTERN FUEL COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY*.—Unreasonable rate on hard coal from Milwaukee, Wis., to Cuba City, Wis., reconstituted to Galena, Ill. *A. Teller* for complainant. *C. C. Wright* for defendant. November 11, 1912. Reparation awarded for \$29.15.

4315 (U. R. No. 731). *ARCHITECTS & ENGINEERS' SUPPLY COMPANY ET AL. v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rates on motor cycles from points in Massachusetts and Ohio to Kansas City, Mo., and Ottawa, Kans. *G. M. Stephen* for complainants. *B. M. Flippin, D. L. Meyers, J. L. Coleman, R. B. Scott, G. H. Crosby, W. F. Dickinson, W. T. Hughes,* and *William Ellis* for defendants. October 7, 1912. Reparation awarded for (total) \$37.60.

4642 (U. R. No. 732). *J. K. HINKLE & COMPANY v. PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Unreasonable charges on wheat from Rushville, Ind., to New York City for export. *O. B. Riley* for complainants. *Pickens & Pickens* for defendants. November 11, 1912. Reparation awarded for \$11.95.

4502 (U. R. No. 733). *GORDON & FERGUSON ET AL. v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL.*—Unreasonable rates on furs and skins from certain eastern cities to Minneapolis and St. Paul, Minn. *F. A. Larish* for complainants. *W. D. Burr, G. W. SeEVERS, Briggs, Thygeson & Everall, O. W. Dynes,* and *A. H. Bright* for defendants. November 11, 1912. Award of reparation deferred pending presentation of necessary data.

4509 (U. R. No. 734). *OAKES & COMPANY v. UNION PACIFIC RAILROAD COMPANY ET AL.*—Rate on canned kraut, cut beans, and hominy from Greeley, Colo., to Boise, Idaho, not found unreasonable. *O. M. Rogers* for complainant. *N. H. Loomis, P. L. Williams, F. C. Dillard, H. A. Scandrett,* and *L. T. Wilcox* for defendants. December 2, 1912. Complaint dismissed.

4379 (U. R. No. 735). *FORD MANUFACTURING COMPANY v. VANDALIA RAILROAD COMPANY ET AL.*—Rate on roofing paper from Evansville, Ind., to Bowling Green, Ky., not found unreasonable. *B. F. Fuller* for complainant. *W. G. Dearing, H. C. McLellen,* and *A. S. Brandeis* for Louisville & Nashville Railroad Company. December 2, 1912. Complaint dismissed.

4400 (U. R. No. 736). *SHEBOYGAN MINERAL WATER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—(Dismissed without order.)

4552 (U. R. No. 737). *ALBERT MILLER & COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable rate on hay from
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Fountain, Mich., to Chicago, Ill. *J. E. Robinson* for complainant. *R. P. Patterson, C. C. Wright*, and *A. H. Lossow* for defendants. December 2, 1912. Reparation awarded for \$1.34.

4632 (U. R. No. 738). *MAHAFFEY COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.*—Rate on potatoes from Paducah, Ky., to Amberg, Wis., not found unreasonable. *Samuel Mahaffey* for complainant. *R. B. Scott* and *O. W. Dynes* for defendants. November 11, 1912. Complaint dismissed.

5114 (U. R. No. 739). *FORT SMITH BISCUIT COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rates on boxes and cartons from Chicago, Ill., to Fort Smith, Ark. *C. D. Mowen* and *W. R. Martin* for complainant. *J. H. Schaich, F. H. Wood, H. G. Herbel*, and *F. G. Wright* for defendants. December 10, 1912. Reparation awarded for \$390.44.

4780 (U. R. No. 740). *BUFFALO COLD STORAGE COMPANY v. GULF, COLORADO & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rate on dressed poultry from points in Texas to Buffalo, N. Y. *W. T. Chisholm* for complainant. *D. P. Connell* for Chicago, Indiana & Southern Railroad Company. December 9, 1912. Reparation awarded for (total) \$645.10.

3801 (U. R. No. 741). *STERLING SALT COMPANY v. PENNSYLVANIA RAILROAD COMPANY.*—Door boards furnished by complainant at its own expense used in the transportation of salt from Halite, N. Y. *Clarke, Breckenridge & Caffey* for complainant. *H. W. Bikel* for defendant. January 7, 1913. Reparation awarded for \$2,549.

4558 (U. R. No. 742). *JAMES KENNEDY & COMPANY, LIMITED v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.*—Rate on lumber from Winnsboro and Ferriday, La., to New Orleans for export not found unreasonable. *J. C. McLanahan* for complainant. *H. G. Herbel* and *E. L. Sargent* for defendants. Complaint dismissed.

4842 (U. R. No. 743). *SYLVIO CASPARIS ET AL v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.*—Misrouting of two shipments of one steam shovel and parts from South Milwaukee, Wis., to Brighton Station, Cincinnati, Ohio. *H. B. Arnold* for complainants. *C. C. Wright* and *E. M. Hyzer* for defendant. January 7, 1913. Reparation awarded for \$151.09.

I. & S. Docket No. 118 (U. R. No. 744). *INTERSTATE CLASS RATES IN IOWA, NORTH DAKOTA, AND SOUTH DAKOTA.*—Advanced rates complained of voluntarily canceled by the carriers. *W. G. Smith, P. W. Dougherty*, and *E. F. Swartz* for South Dakota Board of Railroad Commissioners. *G. T. Bell* for Sioux City Commercial Club. *O. W. Dynes* and *H. E. Pierpont* for Chicago, Milwaukee & St. Paul Railway Company. January 13, 1913. No reparation.

NOTE.—The amount of reparation awarded in the above cases aggregates \$4,889.26.

REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE
COMMISSION DURING THE TIME COVERED BY THIS VOLUME.

3277. (Amendment No. 2.) *RIVERSIDE MILLS v. CHARLESTON & WESTERN CAROLINA RAILWAY COMPANY ET AL.*—November 12, 1912. Reparation for \$15.56 on shipment of cotton-factory sweepings from Augusta, Ga., to Louisville, Ky., on account of excessive rate.

1280. *CALIFORNIA COMMERCIAL ASSOCIATION v. WELLS FARGO & COMPANY.*—December 2, 1912. Reparation for \$1,023.06 on combined or bulk shipments from New York, N. Y., to San Francisco, Cal., on account of excessive rates.

3933. *ALPHA PORTLAND CEMENT COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—December 28, 1912. Reparation for \$8,685.42 on shipments of cement from Manheim, W. Va., to various destinations on account of excessive rates.

4401. *WILSON BROS. v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY.*—January 6, 1913. Reparation for \$398 on account of unlawful track-storage charges at Brooklyn, N. Y.

3926. *E. RICKARDS v. ATLANTIC COAST LINE RAILROAD COMPANY.*—January 6, 1913. Reparation for \$2,689.39 on shipments of mine-prop logs from points in North Carolina to Norfolk, Va., on account of excessive rates.

4232. *SAMUEL PRESTON DAVIS v. ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ET AL.*—January 6, 1913. Reparation for \$155 on shipments of cottonseed meal and hulls from Monticello, Ark., to points in Louisiana on account of excessive rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$12,966.43.

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**ORDERS ISSUED INVOLVING REPARATION ON INFORMAL PLEADINGS
FOR THE YEAR ENDING NOVEMBER 30, 1912.**

For the year ending November 30, 1912, the number of orders issued involving reparation in informal pleadings was 3,096; the number of claims denied or otherwise closed during that period was 799; and the amount of reparation awarded was \$295,011.93.

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The railroad company has no power to issue a through export bill of lading without the consent of the steamship company. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (222).

If the bill of lading is to be used for security with the banks, it must contain no indefinite provisions. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (223).

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BLANKET, GROUP, AND ZONE RATES.

BLANKET RATES.

Although the Commission has often approved blanket or group rates, in this case rates graded with distance are prescribed by the Commission. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

The Commission can not approve a blanket rate which imposes upon any point an unreasonable burden. *Switzer Lumber Co. v. K. C. S. Ry. Co.* 611 (612).

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Rates on hops, which are blanketed from all points of origin in Washington and Oregon to all destinations upon the Missouri River and east thereof, approved by the Commission. *In re Advances on Hops*, 16.

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Blanket rates discussed. *In re Class and Commodity Rates* 401 (402); *Dewey Bros. Co. v. L. H. & St. L. Ry. Co.* 700 (701); *Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co.* 669; *Davidson Bros. v. L. & N. R. R. Co.* 103 (105); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674).

Where grouping is reasonably done the shorter distances to the markets may be determined by the average distances from the points reached by two or more systems; and where there is no such point in a group the distance should be computed from a point centrally located. *Superior Commercial Club v. G. N. Ry. Co.* 342 (345).

Group rates on coal have long been maintained, and the one now before the Commission seems to be entirely reasonable. *Taylor v. N. & W. Ry. Co.* 613 (616).

So long as the grouping system is continued for points in southern Oregon it ought to be continued for Portland and other points grouped therewith. *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (128).

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In all rate groups there must necessarily be a more or less abrupt "rate hump" as between the most distant point in one group and the nearest point in the adjoining group. *Taylor v. N. & W. Ry. Co.* 613 (616).

Carriers given permission to change from mileage basis to the group basis, provided the short hauls are properly provided for. In re *Advances on Cottonseed Products*, 237.

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Rates on grain products from Union Pacific stations in Kansas to points in groups 1, 2, and 3 in Texas held unreasonable. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633).

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BRIDGES.

The cost of constructing and maintaining a bridge across a great river may be equivalent to many miles of railway. *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (96).

The Commission adheres to its former order that the absorption of bridge charges on traffic to Louisville, Ky., and the refusal to absorb such charge at New Albany, Ind., subjects New Albany to undue prejudice. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 116.

Carriers are not required to absorb the bridge arbitrary on lumber between Council Bluffs, Iowa, and Omaha, Nebr. *Hafer Lumber Co. v. C. & N. W. Ry. Co.* 27.

BULK. See also **PACKING**.

The space occupied by an article may properly be considered in determining its appropriate classification rating. *Western Classification case*, 442 (472).

BULKY ARTICLES.

Western classification rule relating to articles too large to be loaded through the side door of a 36-foot box or stock car, or too long to be loaded through the end window thereof, modified in accordance with the decision in the *Brunswick-Balke Collender case*, 23 I. C. C. 395, subject to further investigation. Western Classification case, 442 (489).

BURDEN OF PROOF. See also ADVANCE IN RATES.**REASONABLENESS OF RATE.***In General.*

The burden is on a complainant to show that a rate, reasonable when established, has become unreasonable. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

Advance in Rates.

The burden is on the carrier to justify an advanced rate or charge. In re *Advance in Demurrage Charges*, 314 (323); In re *Advances on Hops*, 16; *Bristol Door & Lumber Co. v. N. & W. Ry. Co.* 87 (89); In re *Milling-in-transit Regulations*, 90 (92); In re *Advances on Corn*, 46 (47); In re *Advances on Knitting-factory Products*, 634 (639).

CANCELLATION. See also TARIFFS.

Cancellation of one rate leaving a higher rate in effect. In re *advances on Cotton-seed Products*, 237 (240); In re *Advances on Salt*, 610; In re *Advances in Class and Commodity Rates*, 401 (402); In re *Advances on Knitting-factory Products*, 634 (635); In re *Advances on Furniture*, 331; *Holcker-Elberg Mfg. Co. v. O. R. I. & P. Ry. Co.* 212 (213); Western Classification case, 442 (449).

CAR DISTRIBUTION.

Mine rating is a practice in connection with the movement of interstate traffic which is within the jurisdiction of the Commission. In re *Mine Ratings*, 286 (296).

CAR FITTING.

Rules relating to car fitting and dunnage, discussed, and recommendations made. Western Classification case, 442 (495).

CAR FURNISHING. See also MINIMUM CARLOAD WEIGHT.

It is the duty of the carrier to furnish adequate number of cars for the handling at Galveston of export cotton. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (228).

It is the duty of the carrier to furnish necessary equipment for the movement of the potato traffic from Maine to New England. In re *Advances on Potatoes*, 159 (169).

Where carriers do not desire to tender cars shorter than 36 feet in length, they need not embrace them in their tariff; but if cars less than 36 feet in length are to be tendered for shipment they should be covered by a proper tariff provision. In re *Wool, Hides, and Pelts*, 185 (188).

Where, as in this case, the failure to furnish cars of adequate size to contain the minimum carload weight rests upon carriers operating wholly in Mexico, no relief can be granted by the Commission. *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5.

Where a shipper orders a box car and a carrier for its own convenience furnishes an Eastman heater car, the use of the box car ordered should be protected. In re *Advances on Potatoes*, 159 (169).

Where a carrier furnishes two small cars in lieu of a large car ordered, the carrier should protect the shipper on the basis of the minimum weight applicable to the car ordered. *Riverside Mills v. G. R. R.* 434 (435).

The provision that the minimum applicable to the size of the car ordered should govern, should be made universal. *Western Classification case, 442 (480).*

Carriers held themselves out as prepared to furnish cars of various sizes and apply charges based upon the size of the car, thus conferring upon the shipper a legal right to demand a car of certain size. *Riverside Mills v. G. R. R. 434 (435).*

CARETAKERS.

The provision of section 1, under which passes are furnished to caretakers, is not mandatory, but is permissive. *Ream v. S. P. Co. 107 (110).*

A caretaker of chickens held not to be entitled to a free pass under a tariff providing for such a pass for caretakers of live stock. *Ream v. S. P. Co. 107 (110).*

A passenger accompanying a corpse presented only two first-class tickets. Held, the passenger was properly compelled to purchase an additional half-fare ticket to entitled her to occupy a compartment. *Johnson v. A. T. & S. F. Ry. Co. 207.*

The classification should either provide for the transportation of necessary caretakers or require carriers to take care of stoves and replenish fuel in transit when such protection is required. *Western Classification case, 442 (445).*

CARLOAD, LESS-THAN-CARLOAD, AND ANY-QUANTITY RATES.

CARLOAD RATES.

The idea of carload rates is that the consignee will unload. In re *Advances in Demurrage Charges, 314 (316).*

Since the handling and storage of carload quantities are exceptional and accidental, some fair average figure for compensation should be adopted. This figure has been 1½ cents per 100 pounds for some time past, and that figure may be allowed to stand for the future. *Western Classification case, 442 (488).*

Rule of Western Classification, which forbids carriers' agents to act as agents for shippers or receivers of freight in securing carload ratings, modified and approved. *Western Classification case, 442 (478).*

Generally speaking, carload ratings should be established whenever carload quantities are offered for shipment and public interest requires it. *Western Classification case, 442 (443).*

An excessive difference between the carload and less-than-carload rates on the same commodity results in an undue preference to the carload shipper. *Western Classification case, 442 (443).*

The term "one loading point" held to be ambiguous and should be eliminated from carload rule. *Western Classification case, 442 (478).*

The fact that cotton is rated first class, any quantity, is not of itself a justification for the elimination of the carload rating upon cotton mattress felts if carload quantities are offered for shipment. *Western Classification case, 442 (572).*

Carload rating, with a minimum of 24,000, ordered to be established by the Commission on smoking tobaccos. *Bagley & Co. v. P. M. R. R. Co. 698.*

Carload rating on smoking pipes should be restored. *Western Classification case, 442 (586).*

Shippers should not be punished by the carriers for the derelictions of carriers' agents in applying carload and less-than-carload rates. *Western Classification case, 442 (479).*

LESS-THAN-CARLOAD RATES.

It would hardly be in the public interest to require carriers to load or unload large, heavy, bulky l. c. l. shipments at any one of the thousands of stations in this country where they do not and can not maintain crews capable of handling consignments of this character. *Western Classification case, 442 (491).*

Described. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (381).

CARRIERS. *See also* CONNECTING CARRIERS; EXPRESS COMPANIES; BRIDGES; WATER CARRIERS; LIGHTERAGE COMPANIES; TRANSFER COMPANIES; FOREIGN CARRIERS; WHARVES.

COMMON CARRIERS.

The Commission rejects the theory that a railroad is a common carrier only for those who have been accustomed to patronize it. *In re Mine Ratings*, 286 (294).

CARRIERS SUBJECT TO ACT.

Lighterage Company.

Lighterage company held to be a common carrier subject to the act and entitled to joint through rates with rail line. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

CARRIERS NOT SUBJECT TO ACT.

Foreign Lines.

The Commission has no jurisdiction over railroad operating wholly in a foreign country. *Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co.* 376 (378); *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (140); *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5.

Transfer Companies.

The Commission has no jurisdiction over a common-carrier transfer company. *Anacostia Citizens Assn. v. B. & O. R. R. Co.* 411 (414).

Water Lines.

The Commission has no direct authority to require the issuing of through export bills of lading, since it has no jurisdiction over the water carriers, which are necessary parties to such contracts. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (225).

Wharf Companies.

Wharf company held not to be a common carrier subject to the act. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (140).

CARS.

Generally speaking, freight cars should be made to fit the business. Within reasonable limits business may be required to adapt itself to the car. *Western Classification case*, 442 (443).

The utmost obligation that the law lays upon a carrier is to equip itself with sufficient cars, not to meet the hopes and expectations of the owner of the mine as expressed in its physical development, but to meet his actual shipments. *In re Mine Ratings*, 286 (291).

Use of Eastman heater cars, and charges to shippers for use of such cars, discussed. *In re Advances on Potatoes*, 159 (166, 167).

The per diem charge by one railroad to another for the use of cars at the present time is 35 cents per car per day. *Spiegle v. S. Ry. Co.* 71 (75). *See also* National Lumber Exporters' Assn. v. K. C. S. Ry. Co. 78 (84).

CAR-SERVICE AGENT.

Mentioned. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (230).

CHANGE IN RATES.

Failure to post supplement to tariff which contained no change as to rates affords no basis for an award of reparation. *Faribault Furniture Co. v. C. G. W. R. R. Co.* 40.

Shippers are charged with knowledge of the law as to the manner in which transportation rates may be changed, and are bound thereby. A change in rates on short notice, under authority of Commission, affords no basis for reparation. *Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co.* 366 (367).

CHARACTER OF THE COMMODITY.

Considered in determining the proper classification of articles. *Western Classification case*, 442 (473).

CHARGING WHAT TRAFFIC WILL BEAR.

While the rule that a carrier should not charge more than the traffic can bear has some weight with a carrier in the making of its rates, it does not impose upon a carrier any duty to carry traffic at a loss. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (673).

Fact that traffic could formerly bear a higher rate than at present, discussed. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

The ability of an article to bear the rate considered in determining the reasonableness of a rate. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (363).

Considered. *In re Advances on Drain Tile & Sewer Pipe*, 688 (693).

CIRCUITOUS ROUTE.

A line is circuitous where it exceeds the short line by 15 per cent or more. *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (95).

A line 103 miles longer than the direct line held to be circuitous. *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (94).

Instance of circuitous route. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (195).

Circuitous line justified in deviating from rule of section 4 in order to meet competition of short line. *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (94); *In re Lumber Rates*, 50 (51); *In re Southern Ry. Co.* 407 (410); *McCullough v. L. & N. R. R. Co.* 48 (49).

CIRCUMSTANCES AND CONDITIONS. *See also* DISCRIMINATION; LONG AND SHORT HAUL; MEASURE OF RATE; PREFERENCES AND PREJUDICES.

Rates that were entirely reasonable when established may be unreasonable when the Commission passes upon their reasonableness. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (677).

Dissimilarity of, referred to. *Dewey Bros. Co. v. L. H. & St. L. Ry. Co.* 700 (701).

CLASS RATES. *See also* CLASSIFICATION.

Elimination of class rates and establishment of higher commodity rates on furniture not found unreasonable. *In re Advances on Furniture*, 331.

Lower rate prescribed by Commission upon complaint that class rate was unreasonable and that commodity rate be established on bananas. *Davidson Bros. v. L. & N. R. R. Co.* 103 (105).

Double first-class rate applied to rocking chairs, set up, not found unreasonable. *Railroad Commissioners of Montana v. C. B. & Q. R. R. Co.* 371.

CLASSIFICATION. *See also* COMPARATIVE RATES.

DEFINITION.

Classification defined. *Western Classification case*, 442 (453).

PUBLIC FUNCTION.

Classification is a public function and should be conducted accordingly. *Western Classification case*, 442.

IN GENERAL.

The work of classification should be confined to classification as such, entirely separate from the question of rates or revenues of carriers. *Western Classification case*, 442.

The classification movement since 1887 and the uniform classification of 1891. Western Classification case, 442 (443).

ELEMENTS OF CLASSIFICATION.

In determining the proper classification of articles the following elements are considered by the Commission: Bulk, character of article, competition, cost of service, desirability of the traffic, distinction in transportation conditions, ease of handling, expense of carriage; hazardousness, liability to waste or injury, loading, manner of packing, possibility or probability of false billing, risk, space occupied, tonnage, use, utilization of equipment, value of article, value of service, volume of traffic, and weight. Western Classification case, 442 (472).

WHAT CLASSIFICATION GOVERNS.

On traffic moving from one classification territory into another, the application of but a single classification rating or of a combination of both ratings, considered. Virginia Mfg. Co. *v.* A. C. L. R. R. Co. 68 (70).

Comparison of fifth-class rating in southern classification with fourth-class rating in the official classification. In re Classification of Empty Barrels, 641 (643).

WHEN CLASS RATE APPLIES.

Only when an article is clearly comprehended within the descriptive terms of a commodity rate can that article be considered as having been removed from the classification. *Crombie & Co. v. S. P. Co.* 233 (235). See also *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (250).

In the absence of a specific rate on liquid tree spray, held that the lawfully applicable rate was a rate on insect poison, *n. o. s.*, and not a rate on liquid sheep dip. *Bernheim & Co. v. O. R. R. & N. Co.* 156 (157).

CLIMATIC CONDITIONS.

Climatic conditions considered in determining reasonableness of rate. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (363).

COLLECTION OF CHARGES.

It is the duty of the delivering carrier to collect the lawful rates on shipments and to correct any errors that may have been made by the agents of the initial carrier in billing or in the collection of prepaid charges. Western Classification case, 442 (444).

COMBINATION RATES. See THROUGH RATES.

COMMERCIAL AND ECONOMIC CONDITIONS.

Commercial conditions considered in determining the question of the relation of rates on flaxseed and linseed oil. In re *Advances on Flaxseed*, 337 (341).

Commercial conditions may be considered in connection with other factors that determine the reasonableness of a particular rate, but the adequacy of the revenue for the service performed by the carriers must take precedence over market conditions affecting the commodity transported. *Lindsay Bros. v. P. M. R. R. Co.* 363 (369).

Where rival mine operators have the same freight rates to an equally accessible territory, the failure of one of them to sell in the near-by markets must be due either to a difference in the quality of the coal, the cost of operating, or the aggressiveness of the respective selling forces. These are disadvantages which can be removed only by the complainant. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (243).

Foreign competition: The act which the Commission administers was not passed to reinforce the provisions of the tariff law. In re *Advances on Manganese Ore*, 663 (665).

Prosperous condition of industry: The alleged necessities of a certain traffic can not be urged as a reason why the carriers should be required to maintain rates which were established to meet other conditions and which the Commission finds to be unduly low to-day. In re Advances on Flaxseed, 337 (341).

Prosperous condition of industry: Whereas formerly the state of the sheep industry was such that the old rate could be paid with ease, that industry, owing to its less prosperous condition, now finds these rates a serious burden; that is, the traffic could formerly bear a higher rate than at present. National Wool Growers' Assn. v. O. S. L. R. R. Co. 675 (678).

Shipper's needs: It is well established that the Commission may not make the needs of the shipper the basis of reasonable rates. Superior Commercial Club v. G. N. Ry. Co. 342 (348).

COMMODITIES.

Acid, boracic. Western classification, 442 (499).

Acid, muriatic, nitric, and sulphuric. Western classification, 442 (500).

Acid, oxalic. Western classification, 442 (500).

Acid, pyroligneous. Western classification, 442 (500).

Acid, stearic. Western classification, 442 (589).

Advertising matter. Western classification, 442 (501).

Agricultural implements. *See* Implements.

Agricultural insecticides. *See* Insecticides.

Aluminum cooking utensils. *See* Utensils.

Ammonia, bromide. Western classification, 442 (557).

Ammonia, carbonate. Western classification, 442 (558).

Animal foods. *See* Foods.

Anthracite coal. *See* Coal.

Apples. Espanola, N. Mex., to Arizona and California, 174.

Apples. Oregon, Utah, Idaho, and California to Crawford, Nebr. 259.

Apterite. Chicago, Ill., to Portland, Oreg. 156.

Arsenate of sodium. *See* Sodium.

Arsenic, crude. Western classification, 442 (558).

Asbestos. Western classification, 442 (559).

Athletic goods. Western classification, 442 (502, 503).

Augers. Western classification, 442 (591).

Automobile parts. *See* Frames.

Automobile tire chains. *See* Chains.

Bag linings. *See* Linings.

Bags. Western classification, 442 (530, 560).

Bags, clayed cotton. Western classification, 442 (504).

Bags, mail. Western classification, 442 (530).

Bags, paper. Western classification, 442 (560).

Bakery goods. Western classification, 442 (561, 562).

Baking powder. Western classification, 442 (561).

Ball bearings. *See* Bearings.

Bananas. New Orleans, La., to Glasgow, Ky. 103.

Barley coal. *See* Coal.

Barn-door rails. *See* Rails.

Barrel heading. *See* Headings.

Barrel linings. *See* Linings.

Barrels, empty. Memphis, Tenn., and St. Louis, Mo., to the southeast, 641.

Barrels, empty oil. Paducah, Ky., to New Orleans, La. 372.

Bars, disk. Western classification, 442 (548).

Bars, glass setting. Western classification, 442 (562).
 Bars, iron. *See* Iron.
 Baskets. Suffolk, Va., to New England, New York, New Jersey, and Pennsylvania, 68.
 Bathtubs. Western classification, 442 (587).
 Beans, dried. St. Louis, Mo., to Beaumont, Tex. 695.
 Beans, mixture. Western classification, 442 (603).
 Bearing, ball. Western classification, 442 (505).
 Bedroom furniture. *See* Furniture.
 Beehives. Western classification, 442 (563).
 Beer. *See* Cases and Carriers.
 Berry baskets. *See* Baskets.
 Bicarbonate of sodium. *See* Sodium.
 Binder twine. *See* Twine.
 Bisulphate of sodium. *See* Sodium.
 Bits. Western classification, 442 (591).
 Bituminous coal. *See* Coal.
 Blacking. Western classification, 442 (570).
 Blacks, lamp. Western classification, 442 (563).
 Blades, cutlery. Western classification, 442 (569).
 Blue-print machines. *See* Machines.
 Boards, composition. Western classification, 442 (567).
 Boiler covering. Western classification, 442 (559).
 Boiler parts. Western classification, 442 (564).
 Bolts. Western classification, 442 (565).
 Boracic acid. *See* Acid.
 Box lumber. *See* Lumber.
 Box shooks. *See* Shooks.
 Box toes. Western classification, 442 (505).
 Boxes. Western classification, 442 (506, 566).
 Boxes, cheese. Western classification, 442 (566).
 Boxes, corrugated fiber board. Western classification, 442 (506).
 Brick. Kansas gas belt to Missouri and Iowa, 669.
 Brick, building. Cherryvale, Kans., to Dermott, Ark. 101.
 Brick, fire. St. Louis, Mo., to Texas common points, 141.
 Brick, paving. Danville, Ill., to Englewood, Ill. 366.
 Bromide of ammonia. *See* Ammonia.
 Buckwheat coal. *See* Coal.
 Building brick. *See* Brick.
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 Bungs, wooden. Western classification, 442 (509).
 Butyric ether. *See* Ether.
 Cabbage. Louisiana, Texas, and California to Crawford, Nebr. 259.
 Calves. Refugio, Tex., to New Orleans, La., and St. Louis, Mo. 661.
 Camphor oil. *See* Oil.
 Candles, sulphur. Western classification, 442 (590).
 Candy. Western classification, 442 (507).
 Candy, cough drops. Western classification, 442 (506).
 Canned goods. California to Crawford, Nebr. 259.
 Canned goods. Western classification, 442 (563).
 Cannel coal. *See* Coal.
 Cans, cracker. Western classification, 442 (506).

Cantaloupes. Louisiana and Texas to Crawford, Nebr. 259.
 Cape, fur. Western classification, 442 (575).
 Carbonate magnesium. *See* Magnesium.
 Carbonate of ammonia. *See* Ammonia.
 Carbonate of lime. *See* Lime.
 Carriers, egg. Western classification, 442 (549, 596).
 Carriers, feed and litter. Western classification, 442 (552).
 Carriers, hay. Western classification, 442 (551).
 Carriers, wooden beer bottle. Minneapolis, Minn., to Des Moines, Iowa, 249.
 Cases, beer. Minneapolis, Minn., to Des Moines, Iowa, 249.
 Cases, egg. Western classification, 442 (549, 596).
 Cattle, beef. Texas, New Mexico, and Colorado to Kansas City, Mo. 63.
 Cattle dip. Western classification, 442 (554).
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 Cedar pencil material. South Pittsburg, Tenn., to New York, N. Y. 203.
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 Chains, automobile tire. Western classification, 442 (566).
 Chairs. Carolina territory to Pacific coast, 379.
 Chairs, reclining. Western classification, 442 (574).
 Chairs, rocking. Lincoln, Nebr., to Helena, Mont. 371.
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 Cheese boxes. *See* Boxes.
 Chewing gum. Western classification, 442 (509).
 Chickens. Richmond, Va., to Los Angeles, Cal. 107.
 Chili pepper. *See* Pepper.
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 Cider. Western classification, 442 (597).
 Cider mills and presses. *See* Mills and presses.
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 Class rates. Baker City, Oreg., to points on the O. S. L. 281.
 Class rates. Chicago, Ill., to Sioux City, Iowa, 93.
 Class rates. Joplin branch of the M. P. Ry. Co. and points upon its Northern and Virginia branches, 401.
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 Coal, bituminous. Chicago, Ill., to Rose Hill., Ill. 403.
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Coal, pea. Taylor, Pa., to Hoboken or New York Lighterage Station, N. J. 14.

Coal, rice. Taylor, Pa., to Hoboken or New York Lighterage Station, N. J. 14.

Cod-liver oil. *See* Oil.

Coffee, green. Western classification, 442 (513).

Coffee in cabinets. Western classification, 442 (512).

Coke. Page and Eagle, W. Va., to Carondelet, Mo. 183.

Collars, horse. Western classification, 442 (521).

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Commodity rates. Joplin branch of the M. P. Ry. Co. and points upon its Northern and Virginia branches, 401.

Cookers, seed. Western classification, 442 (599).

Cookers, stock-feed. Western classification, 442 (513).

Cooking utensils. *See* Utensils.

Cooperage. *See* Barrels.

Coops, poultry shipping. Western classification, 442 (568).

Copper articles. Western classification, 442 (568).

Copper, refined. Michigan upper peninsula to New York, N. Y., and Detroit, Mich. 357.

Cordage. Western classification, 442 (514).

Coriander seeds. *See* Seeds.

Cork sheets. Western classification, 442 (516).

Corn. C. M. & St. P. Ry. Co. points to M. St. P. & S. Ste. M. Ry. Co. points in North Dakota, 46.

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Corncribs. Western classification, 442 (569).

Corpse. San Diego, Cal., to Boston, Mass. 207.

Corrugated fiber board boxes. *See* Boxes.

Cotton. Galveston, Tex. Demurrage, 216.

Cotton bags. *See* Bags.

Cotton-factory sweepings. *See* Sweepings.

Cotton seed. Oklahoma to Texas, 237.

Cotton-seed hullers. *See* Hullers.

Cotton-seed oil. *See* Oil.

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Crackers. Western classification, 442 (561, 562).

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Crates, poultry shipping. Western classification, 442 (568).

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Culm coal. *See* Coal.

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Cups, valve. Western classification, 442 (592).

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 Cutters, seed potatoes. Western classification, 442 (550).
 Cattlebone. Western classification, 442 (517).
 Decoy birds. Western classification, 442 (502).
 Desks, school. Western classification, 442 (520).
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 Distillers' dried grains. *See* Grains.
 Door rails. *See* Rails.
 Doors, boiler. Western classification, 442 (564).
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 Dried grains. *See* Grains.
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 Fertilizer. Little Rock to Ravana, Ark., via an interstate route, 266.
 Fertilizer material. New Orleans, La., to Little Rock, Ark. 645.
 Fiber, flax. Western classification, 442 (572).
 Fiber rods. Western classification, 442 (573).
 Fiber sheets. Western classification, 442 (573).
 Fiber sticks. Western classification, 442 (573).

Fillers, packing. Western classification, 442 (573).
Fine-cut tobacco. *See* Tobacco.
Fire brick. *See* Brick.
Fire clay. *See* Clay.
Fittings, pipe. Western classification, 442 (585, 586).
Flax fiber. *See* Fiber.
Flaxseed. Minneapolis, Minn., and other points to Chicago, Ill., and other points, 337.
Flaxseed. Minnesota, South Dakota, and Iowa to Duluth-Superior via Minneapolis, Minn. 342.
Flexible roofing. *See* Roofing.
Flocks. Western classification, 442 (604).
Florist's stock. Western classification, 442 (554).
Flower seed. *See* Seeds.
Foods, animal and poultry. Western classification, 442 (501).
Forest products. *See* Shooks.
Frames, automobile wind-shield. Joliet, Ill., to Dallas, Tex. 212.
Frames, honey section. Western classification, 442 (563).
Fresh vegetables. *See* Vegetables.
Fruit. Lodi, Cal., to eastern points, 35.
Fruit. Louisiana and Texas to Crawford, Nebr. 259.
Fruit. Western classification, 442 (574).
Fruit baskets. *See* Baskets.
Fruit, citrus. California to Crawford, Nebr. 259.
Fruit, deciduous. Oregon, Utah, Idaho, and California to Crawford, Nebr. 259.
Fruit jelly. *See* Jelly.
Fur caps. *See* Caps.
Fur gloves. *See* Gloves.
Fur hats. *See* Hats.
Fur mittens. *See* Mittens.
Furnaces, sirup evaporator. Western classification, 442 (603).
Furniture. Burlington, Iowa, to Hotchkiss, Colo. 1.
Furniture. Faribault, Minn., to Fort Worth, Tex. 40.
Furniture. Nappanee, Ind., to Chicago, Ill. 331.
Furniture. St. Louis, Mo., and other points to Texas, 299.
Furniture. Western classification, 442 (574).
Furniture, bedroom. Carolina territory to Pacific coast, 379.
Gas meters. *See* Meters.
Gaskets. Western classification, 442 (593).
Gasoline engine trucks. *See* Trucks.
Gasoline engines. *See* Engines.
Glass setting bars. *See* Bars.
Gloves, fur. Western classification, 442 (575).
Goats. Texas, New Mexico, and Colorado to Kansas City, Mo. 63.
Graders, drag. Western classification, 442 (598).
Grading implements. *See* Implements.
Grain. Black Rock, N. Y. Elevation, 210.
Grain. Hutchinson, Kans. Milling-in-transit, 180.
Grain. Milwaukee, Wis. Elevation, 198.
Grain. Milwaukee, Wis. Milling-in-transit, 90.
Grain. Minnesota, South Dakota, and Iowa to Duluth-Superior via Minneapolis, Minn. 342.

Grain. North Philadelphia, Pa. Elevation, 618.
 Grain. Transit privilege, 130.
 Grain, dried. Midway, Ky., to Norfolk or Newport News, Va. 352.
 Grain, dried. Stanley, Ky., to Akron, Ohio, 700.
 Grain and products. Transit privilege, 130.
 Grain and products. Wichita and other Kansas points to Texas, 625.
 Granite. Barre, Vt., to Atkins yards, East New York, N. Y. 439.
 Granulated smoking tobacco. *See* Tobacco.
 Grape juice. *See* Juice.
 Green vegetables. *See* Vegetables.
 Grindstones. Western classification, 442 (520).
 Ground manganese ore. *See* Ore.
 Grapefruit. Jacksonville and High Springs, Fla., to Helena, Mont. 424.
 Grapes. Lodi, Cal., to eastern points, 35.
 Gum lumber. *See* Lumber.
 Hames. Western classification, 442 (576).
 Hand agricultural implements. *See* Implements.
 Handles, cutlery. Western classification, 442 (569).
 Handles, mixtures. Western classification, 442 (583).
 Handles, mop. Western classification, 442 (582).
 Harness. Western classification, 442 (521, 576).
 Harrows, disk. Western classification, 442 (548).
 Hats, fur. Western classification, 442 (575).
 Hay. Chicago, Ill., from northwest, 680.
 Hay. Eagle Pass, Tex., to points in Mexico, 5.
 Hay. Panama, Mo., to Chattanooga, Tenn. 32.
 Hay. Western classification, 442 (576).
 Hay carriers. *See* Carriers.
 Hay presses. *See* Presses.
 Heading, barrel. Tustin, Mich., to Cincinnati, Ohio, 38.
 Heaters, seed. Western classification, 442 (599).
 Hempseed. *See* Seed.
 Hoe heads. Western classification, 442 (556).
 Hogs. Texas, New Mexico, and Colorado to Kansas City, Mo. 63.
 Honey section frames. *See* Frames.
 Hops. Washington and Oregon to Missouri River and east, 16.
 Horse collars. *See* Collars.
 Horse-radish roots. *See* Roots.
 Horses. Huachuca, Ariz., to Los Angeles and Atascadero, Cal. 255.
 House trimmings. *See* Trimmings.
 Household goods. Prosser, Wash., to Shoshone, Idaho, 275.
 Household goods. Richmond, Va., to Los Angeles, Cal. 107.
 Hullers, cottonseed. Western classification, 442 (599).
 Ice-crushing machines. *See* Machines.
 Implements, agricultural. Western classification, 442 (546, 547, 548, 549, 550, 551).
 Implements, farm. Prosser, Wash., to Shoshone, Idaho, 275.
 Implements, grading. Western classification, 442 (555).
 Implements, hand agricultural. Western classification, 442 (547, 550, 556).
 Implements, road-making. Western classification, 442 (555).
 Implements, parts, agricultural. Western classification, 442, (548, 549, 557).
 Imported Spanish cedar logs. *See* Logs.
 Inedible tallow. *See* Tallow.

Insect poison. *See* Tree spray.
Insecticides, agricultural. Western classification, 442 (594).
Insecticides, other than agricultural. Western classification, 442 (523).
Interior house trimmings. *See* Trimmings.
Iron, bar. St. Louis, Mo., to Tulsa, Okla. 416.
Iron ore. *See* Ore.
Iron salts. *See* Salts.
Iron, scrap. Bartlesville, Okla., to St. Louis, Mo. 672.
Iron stanchions. *See* Stanchions.
Iron-working machinery. *See* Machinery.
Jacks, pumping. Western classification, 442 (522).
Jelly, fruit. Western classification, 442 (598).
Juice, clam. Western classification, 442 (567).
Juice, grape. Western classification, 442 (576).
Junk. Western classification, 442 (524).
Kainit. New Orleans, La., to Little Rock, Ark. 645.
Kettles, sugar. Western classification, 442 (577).
Kitchen sinks. *See* Sinks.
Knife guards. Western classification, 442 (549).
Knitting-factory products. Chicago territory to Arkansas, 634.
Ladders. Western classification, 442 (525).
Lampblacks. *See* Blacks.
Lath, mixture. Western classification, 442 (515).
Lath, yarn. Western classification, 442 (515).
Laundry tubs. *See* Tubs.
Lead salts. *See* Salts.
Leather valve cups. *See* Cups.
Lemons. California to Crawford, Nebr. 259.
Levelers, drag. Western classification, 442 (598).
Lime. Western classification, 442 (578).
Lime, building. Western classification, 442 (578).
Lime, carbonate of. Western classification, 442 (578).
Lime, phosphate of. Western classification, 442 (578).
Linings, bag and barrel. Western classification, 442 (600).
Linseed oil. *See* Oil.
Liquid tree spray. *See* Tree spray.
Litter carriers. *See* Carriers.
Live stock. Prosser, Wash., to Shoshone, Idaho, 275.
Live stock. Texas, New Mexico, and Colorado to Kansas City, Mo. 63.
Logs, cedar and mahogany. Mobile, Ala., via Knoxville, Tenn., to Indianapolis, Ind. 44.
Logs, Spanish cedar. New York, N. Y., to Knoxville, Tenn. 653.
Long-cut tobacco. *See* Tobacco.
Lumber. Arkansas to New Albany, Ind. 116.
Lumber. Brandon, Miss., to Chicago, Ill. 42.
Lumber. Bristol, Va.-Tenn. Milling in transit, 87.
Lumber. Council Bluffs, Iowa, to west of the Missouri River, 27.
Lumber. Cumberland Valley division of the L. & N. to Buffalo-Pittsburgh territory via Cincinnati, Ohio, 407.
Lumber. Cumberland Valley division of the L. & N. to points north of the Ohio River, 193.
Lumber. Dalton, Ga., to Tennessee, 22.

Lumber. Louisiana to Texas, Arkansas, and New Orleans, La. 78.
 Lumber. South to the Ohio River, 50.
 Lumber. Stables, La., to Ashdown, Ark. 611.
 Lumber. Washington to Canada, 376.
 Lumber, box. Portland and Astoria, Oreg., to California, 123.
 Lumber, cottonwood. South to the Ohio River, 50.
 Lumber, gum. South to the Ohio River, 50.
 Lumber, pine. Louisiana to Acme, Tex. 437.
 Lumber, rough and dressed. Dalton, Ga., to Tennessee, 22.
 Lumber, yellow-pine. Brewton, Ala., to New Haven, Conn., and reconsigned to East Cambridge, Mass. 272.
 Lumber, yellow-pine. South to the Ohio River, 50.
 Lumber, yellow-pine. Whitford, La., to Oelwein, Iowa, 171.
 Lump coal. *See* Coal.
 Machinery. Western classification, 442 (595, 579, 526, 522, 556; 599).
 Machinery. Greenville, Ill., to St. Louis, Mo. 214.
 Machinery, iron-working. Western classification, 442 (556).
 Machines, blue-print. Western classification, 442 (564).
 Machines, duplicating. Western classification, 442 (531).
 Machines, ice-crushing. Western classification, 442 (579).
 Machines, sawmill. Western classification, 442 (556).
 Machines, woodworking. Western classification, 442 (556).
 Magnesium. Western classification, 442 (579, 580).
 Magnesium, carbonate. Western classification, 442 (579).
 Magnesium, sulphate of. Western classification, 442 (580).
 Mahogany logs. *See* Logs.
 Mail bags and pouches. *See* Bags and Pouches.
 Manganese ore. *See* Ore.
 Manure-hook heads. Western classification, 442 (556).
 Matzos. Western classification, 442 (562).
 Marbles. Western classification, 442 (580).
 Mattress felts. *See* Felts.
 Melons. Western classification, 442 (574).
 Meters, gas. Western classification, 442 (580).
 Milk, powdered. Western classification, 442 (581).
 Mills, cider. Western classification, 442 (511).
 Mincemeat. Western classification, 442 (581).
 Mirbane oil. *See* Oil.
 Mittens, fur. Western classification, 442 (575).
 Mohair. Western points to eastern points, 679.
 Mop handles. *See* Handles.
 Motor cycles. Classification, 134.
 Mouse traps. *See* Traps.
 Mules. Huachuca, Ariz., to Los Angeles and Atascadero, Cal. 255.
 Mules. Springfield, Mo., via Nettleton, Ark., to Marianna, Ark. 8.
 Multigraphs. Western classification, 442 (531).
 Muriatic acid. *See* Acid.
 Neck yokes. Western classification, 442 (557).
 Nested sinks. *See* Sinks.
 Newspapers. Western classification, 442 (554).
 Nitrate of soda. *See* Soda.
 Nitric acid. *See* Acid.

Nuts. Western classification, 442 (566).

Oats. C. M. & St. P. Ry. Co. points to M. St. P. & S. Ste. M. Ry. points in North Dakota, 46.

Oil. Western classification, 442 (531, 532, 545, 584).

Oil-cake presses. *See* Presses.

Oil, camphor. Western classification, 442 (545).

Oil, citronella. Western classification, 442 (545).

Oil, cod-liver. Western classification, 442 (584).

Oil, corn. Western classification, 442 (584).

Oil, cottonseed. Louisiana and Texas to Chicago, Ill., and Cleveland, Ohio, 702.

Oil, creosote. Western classification, 442 (531).

Oil, linseed. Western classification, 442 (532).

Oil, mirbane. Western classification, 442 (545).

Oil, sassafras. Western classification, 442 (545).

Oilers. Western classification, 442 (583).

Ore, ground manganese. Elizabethport, N. J., to Rochester, and Buffalo, N. Y., Pittsburgh, Pa., and other points, 663.

Ore, iron. New Jersey and New York to eastern Pennsylvania, 303.

Oxalic acid. *See* Acid.

Oxide of tin. *See* Tin.

Packages, empty beer. Charlotte, N. C., to Alexandria, Va. 659.

Packing articles. Western classification, 442 (532).

Packing fillers. *See* Fillers.

Packing requirements. Western classification, 442 (595).

Pads, sweat. Western classification, 442 (521).

Pans, sirup-evaporator. Western classification, 442 (603).

Paper. Western classification, 442 (533, 535).

Paper bags. *See* Bags.

Paper, roofing. Vandalia, Ill., to Toronto, Canada, 432.

Paper tags. *See* Tags.

Paper, writing. Western classification, 442 (535).

Paving brick. *See* Brick.

Pea coal. *See* Coal.

Peaches. Louisiana and Texas to Crawford, Nebr. 259.

Pears. Louisiana and Texas to Crawford, Nebr. 259.

Peas. Western classification, 442 (603).

Pencil material, cedar. *See* Cedar-pencil.

Pepper, chili. California to El Paso, Tex. 233.

Permanganate of potash. *See* Potash.

Petroleum and products. Buffalo group to points in southern Ohio and Indiana, 349.

Petroleum and products. Coffeyville, Kans., to Joliet, Ill. 374.

Phosphate of lime. *See* Lime.

Phosphate of sodium. *See* Sodium.

Pipe covering. Western classification, 442 (559).

Pine tar. *See* Tar.

Pipes. Western classification, 442 (585).

Pipes, sewer. C. f. a. territory to various destinations, 633.

Pipes, smoking. Western classification, 442 (586).

Planters, potato. Western classification, 442 (551).

Plugs, wooden. Western classification, 442 (509).

Plums. Louisiana and Texas to Crawford, Nebr. 259.

Plumbers' goods. Western classification, 442 (586, 587, 600).

Potash, chlorate. Western classification, 442 (536).
 Potash, permanganate. Western classification, 442 (537).
 Potash salt. *See* Salt.
 Potassium. Western classification, 442 (587).
 Potato cutters. *See* Cutters.
 Potato-hook heads. Western classification, 442 (556).
 Potato planters. *See* Planters.
 Potatoes. Green Bay, Wis., to Galesburg, Ill. 30.
 Potatoes. Maine to New England, New York, New Jersey, and Pennsylvania, 159.
 Potatoes. St. Louis, Mo., to Beaumont, Tex., 695.
 Potatoes. South Dakota, western Nebraska, and Colorado to the Mississippi River and east, 247.
 Pottery. Western classification, 442 (538).
 Pouches, mail. Western classification, 442 (530).
 Poultry foods. *See* Foods.
 Poultry dip. Western classification, 442 (554).
 Poultry shipping coops. *See* Coops.
 Poultry shipping crates. *See* Crates.
 Powdered milk. *See* Milk.
 Presses, cider. Western classification, 442 (511).
 Presses, hay. Western classification, 442 (549).
 Presses, oil-cake. Western classification, 442 (599).
 Printers' material. Western classification, 442 (538).
 Pumping jacks. *See* Jacks.
 Pumps. Western classification, 442 (600).
 Pyroligneous acid. *See* Acid.
 Quassia chips. Western classification, 442 (587).
 Rails, barn-door. Western classification, 442 (510).
 Resin. New York Harbor to New York and Vermont, 338.
 Rice coal. *See* Coal.
 Road-making implements. *See* Implements.
 Rocking chairs. *See* Chairs.
 Rods, fiber. Western classification, 442 (573).
 Rods, sucker and pull. St. Louis, Mo., to Tulsa, Okla. 416.
 Roofing, flexible. Western classification, 442 (559).
 Roofing paper. *See* Paper.
 Roots, horse-radish. Western classification, 442 (593).
 Saddlery. Western classification, 442 (521, 576).
 Salt. Kansas salt fields to Oklahoma, 610.
 Salts, carbonate of iron. Western classification, 442 (576).
 Salts, lead. Western classification, 442 (577).
 Salts, potash. New Orleans, La., to Little Rock, Ark. 645.
 Salts, tin. Western classification, 442 (591).
 Salts, zinc. Western classification, 442 (544).
 Sand. New York Harbor to New York and Vermont, 388.
 Sassafras oil. *See* Oil.
 Sawmill Machines. *See* Machines.
 School desks and seats. *See* Desks and Seats.
 Scoured wool. *See* Wool.
 Scrap iron. *See* Iron.
 Scythe stones. *See* Stones.
 Seats, school. Western classification, 442 (520).

Seed, coriander. Western classification, 442 (601).
Seed, fenugreek. Western classification, 442 (518).
Seed, flower. Western classification, 442 (600).
Seed, hemp. Western classification, 442 (600).
Seed hullers. *See* Hullers.
Seed potato cutters. *See* Cutters.
Seed, sunflower. Belle Rive, Dahlgren, and Delafield, Ill., to Cincinnati, Ohio, 48.
Seeds. Western classification, 442 (600, 601).
Sewer pipe. *See* Pipe.
Sheathing, cattle hair. Western classification, 442 (585).
Sheep. Texas, New Mexico, and Colorado to Kansas City, 63.
Sheep dip. Western classification, 442 (554).
Sheet metal. Eastern points to western points, 685.
Shooks, box. Portland and Astoria, Oreg., to California, 123.
Singletrees. Western classification, 442 (557).
Sink tubs. *See* Tubs.
Sinks, kitchen. Chattanooga, Tenn., to San Francisco, Cal. 252.
Sinks, nested. Western classification, 442 (600).
Sirup (boiled cider). Western classification, 442 (597).
Sirup evaporators. *See* Evaporators.
Sizing. Bedford, N. Y., via Weehawken, N. J., to Carthage and other New York points, 429.
Slats, red cedar. South Pittsburg, Tenn., to New York, N. Y. 203.
Sleighs. Wayne, Mich., to Milwaukee, Wis. 368.
Sleighs. Western classification, 442 (542).
Smoking pipes. *See* Pipes.
Smoking tobacco. *See* Tobacco.
Soda, nitrate of. New Orleans, La., to Little Rock, Ark. 645.
Sodium. Western classification, 442 (539, 588, 601).
Sodium, arsenate. Western classification, 442 (601).
Sodium, bicarbonate. Western classification, 442 (539).
Sodium, bisulphate. Western classification, 442 (601).
Sodium, phosphate. Western classification, 442 (539).
Sodium, sulphate. Western classification, 442 (588).
Sodium, sulphite. Western classification, 442 (588).
Soup powders or tablets. Western classification, 442 (589).
Spanish cedar logs. *See* Logs.
Stalls, cow. Western classification, 442 (540).
Stanchions, iron and steel. Western classification, 442 (540).
Staves, oak. Rust and Hatfield, Ark., to New Orleans, La. 78.
Steamers, stock-feed. Western classification, 442 (513).
Stearic acid. *See* Acid.
Steel stanchions. *See* Stanchions.
Stock-feed cookers and steamers. *See* Cookers and Steamers.
Stones, scythe. Western classification, 442 (590).
Straw. Western classification, 442 (576).
Strawberries. Louisiana and Texas to Crawford, Nebr. 259.
Sugar kettles. *See* Kettles.
Sulphate of magnesium. *See* Magnesium.
Sulphite of Sodium. *See* Sodium.
Sulphur. New York Harbor to New York and Vermont, 388.
Sulphur candles. *See* Candles.

Sweat pads. *See* Pads.
 Sweepings, cotton-factory. Augusta, Ga., to Lackland, Ohio, 434.
 Tags, cloth. Western classification, 442 (590).
 Tags, paper. Western classification, 442 (591).
 Tags, tin. Western classification, 442 (591).
 Tallow, inedible. Oklahoma to Texas, Kentucky, Ohio, and Indiana, 237.
 Tar, pine. Western classification, 442 (602).
 Ties, Louisiana to Acme, Tex., 437.
 Tile, drain. C. f. a. territory to various destinations, 688.
 Tin cans. *See* Cans.
 Tin, oxide. Western classification, 442 (591).
 Tin plate. Eastern points to western points, 685.
 Tin salts. *See* Salts.
 Tin tags. *See* Tags.
 Tobacco, long-cut, fine-cut, cut-plug, and granulated smoking. Detroit, Mich. to New York, N. Y. 698.
 Tomatoes. Western classification, 442 (593).
 Tools. Western classification, 442 (591).
 Transplanters, tree. Western classification, 442 (592).
 Traps, mouse. Western classification, 442 (541).
 Tree spray. Chicago, Ill., to Portland, Oreg. 156.
 Tree transplanters. *See* Transplanters.
 Trimmings, interior house. Louisville, Ky., to Oklahoma City, Okla., and Chattanooga, Tenn. 656.
 Trucks, farm. Western classification, 442 (541).
 Trucks, gasoline engine. Western classification, 442 (541).
 Trunk-covering materials. Eastern points to western points, 685.
 Tubing, barn-door. Western classification, 442 (510).
 Tubs, sink and laundry. Chattanooga, Tenn., to San Francisco, Cal. 252.
 Turnips. Western classification, 442 (593).
 Turpentine. Western classification, 442 (592).
 Twine, binder. Western classification, 442 (503).
 Utensils, aluminum cooking. Western classification, 442 (596).
 Valve cups. *See* Cups.
 Vegetables. Louisiana, Texas, and California to Crawford, Nebr. 259.
 Vegetables. St. Louis, Mo., to Beaumont, Tex. 695.
 Vegetables. Western classification, 442 (593, 602, 574).
 Vegetables, dried. Western classification, 442 (602).
 Vegetables, evaporated. Western classification, 442 (602).
 Veneer baskets. *See* Baskets.
 Vines, cranberry. Western classification, 442 (606).
 Waiters, dumb. Western classification, 442 (571).
 Washboards, packing requirements. Western classification, 442 (603).
 Washers. Western classification, 442 (593).
 Washstands. Chattanooga, Tenn., to San Francisco, Cal. 252.
 Waste, woolen yarn. Western classification, 442 (594).
 Wheels, ferris. Western classification, 442 (519).
 Whisky. Athertonville, Ky., to Mobile, Ala., and New Orleans, La. 397.
 Whiting. Western classification, 442 (543).
 Wind-shield frames. *See* Frames.
 Wooden beer carriers. *See* Carriers.

Wooden plugs. *See* Plugs.
Woodworking machines. *See* Machines.
Wool. Western points to eastern points, 675.
Wool, scoured. Albuquerque, N. Mex., to eastern points, 185.
Wool in the grease. Western points to eastern points, 185.
Woolen yarn waste. *See* Waste.
Writing paper. *See* Paper.
Yarn waste, woolen. Western classification, 442 (594).
Yellow-pine lumber. *See* Lumber.
Zinc salts. *See* Salts.

COMMODITY RATES. *See also* CLASSIFICATION.

A commodity rate is to be applied strictly. It can not be applied upon analogous articles. *Crombie & Co. v. S. P. Co.* 233 (235).

While a classification should not be departed from except in cases demanded by special conditions, commodity tariffs in restricted numbers will probably always remain a necessity. *Western Classification case*, 442 (453).

Elimination of class rates and establishment of higher commodity rates on furniture, not found unreasonable. *In re Advances on Furniture*, 331.

Lower rate prescribed by the Commission upon complaint that the class rate was unreasonable. *Davidson Bros. v. L. & N. R. R. Co.* 103 (105).

COMPARATIVE RATES.

Articles in western classification territory. *See Western Classification case*, 442.

Automobile wind-shields compared with other articles. *Holcker-Elberg Mfg. Co. v. C. R. I. & P. Ry. Co.* 212.

Beer-bottle carriers compared with wooden boxes. *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (250).

Box shooks and box lumber compared with other lumber. *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (124).

Brick: Different kinds of brick compared. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (151).

Candy: Same rating on all kinds of candy. *Western classification case*, 442 (503).

Chairs: Different rates on different kinds shipped in different manner. *Railroad Commissioners of Montana v. C. B. & Q. R. R. Co.* 371.

Coal: Different rates on different grades. *Marian Coal Co. v. D. L. & W. R. R. Co.* 14.

Coal: Cannel and bituminous compared. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (244).

Dynamite compared with other articles. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19.

Forest products and lumber compared. *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (125).

Finished and unfinished articles compared. *Western classification case*, 442 (503).

Flaxseed and grain compared. *In re Advances on Flaxseed*, 337 (340).

Hops compared with oranges and wool. *In re Advances on Hops*, 16 (17).

House trimmings in the white or in the rough compared with house trimmings treated to a coat of filler and shellac. *Struck Co. v. L. & N. R. R. Co.* 656 (658).

Linseed oil and flaxseed compared. *In re Advances on Flaxseed*, 337 (341).

Liquid tree spray compared with liquid sheep dip. *Bernheim & Co. v. O. R. R. & N. Co.* 156.

Lumber: Hardwood and yellow-pine compared. *In re Lumber Rates*, 50 (54).

St. L. Ry. 22 (25).

Lumber: Walnut, cherry, and cedar compared with other lumber. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (194).

Motor cycles and bicycles compared. *Griffing v. C. & N. W. Ry. Co.* 134 (135).

Parts compared with completed article. *Western classification case*, 442 (487).

Scrap iron and spelter compared. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (673).

Sinks: Mixed carload of sinks and combination sink and laundry tubs. *Cahill Iron Works v. N. C. & St. L. Ry.* 252.

Staves and lumber compared. *National Lumber Exporters' Asso. v. K. C. S. Ry. Co.* 78 (86).

Tobacco: Rating on smoking tobacco. *Bagley & Co. v. P. M. R. R. Co.* 698.

Trunk metal covering compared with sheet metal of commerce. *In re Advances on Trunk-covering Material*, 685 (686).

Vegetables: Different rates on winter and summer vegetables. *City of Crawford v. C. & N. W. Ry. Co.* 259 (263).

Wheat compared with grain. *Superior Commercial Club v. G. N. Ry. Co.* 342 (343).

Wool: Classification rating. *In re Wool, Hides, and Pelts*, 185.

COMPETITION.

IN GENERAL.

Competition is to be considered in determining the proper classification of an article. *Western Classification case*, 442 (473).

The absence of competition is to be considered in determining the relative reasonableness of a rate. *In re Advances in Class and Commodity Rates*, 401 (402).

Competition is not to be considered in determining a question of discrimination under section 2. *In re Advances on Manganese Ore*, 663 (668).

The existence of competition at a favored point is no defense to a charge of undue prejudice in violation of section 3 when similar competitive conditions exist at the place prejudiced. *Southern Furniture Mfrs. Asso. v. S. Ry. Co.* 379 (386); *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 116 (119).

CROSS-COUNTRY COMPETITION.

Considered in determining relative reasonableness of rates. *Superior Commercial Club v. G. N. Ry. Co.* 342 (345); *Lebanon Commercial Club v. L. & N. R. R. Co.* 277 (279).

MARKET COMPETITION.

Market competition is the desire of various carriers to transport into a given territory from the points of origin which they serve the articles consumed there. *In re Lumber Rates*, 50 (59).

Market competition considered in determining reasonableness of a rate. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); *Taylor v. N. & W. Ry. Co.* 613 (617).

While market competition may be considered in determining a violation of section 3, it is no defense to a charge of undue prejudice that competition compels the low rate at the favored point when similar conditions obtain at the point discriminated against. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (246).

RAILROAD COMPETITION.

Railroad competition considered in determining reasonableness of rates. *City of Crawford v. C. & N. W. Ry. Co.* 259 (264); *McCullough v. L. & N. R. R. Co.* 48 (49); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (24).

Competition of circuitous line with short line considered in determining relative reasonableness of a rate. *Edwards & Bradford Lumber Co. v. O. B. & Q. R. R. Co.* 93 (95).

Fact that there are more competing lines in one section than in another, considered in determining the relative reasonableness of rates. *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (654).

Railroad competition considered in determining a question of undue prejudice under section 3. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648); *Gund & Co. v. C. B. & Q. R. R. Co.* 326 (329).

Circuitous line held to be justified in deviating from rule of section 4 because of competition with short line. *McCullough v. L. & N. R. R. Co.* 48 (49); *In re Lumber Rates*, 50 (51); *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (94).

Railroad competition, in this case, held not to justify a deviation from section 4. *Lebanon Commercial Club v. L. & N. R. R. Co.* 277 (279).

WAGON COMPETITION.

Joint rates put into effect between certain cities by carriers in order to compete with traffic handled by wagons. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (282).

WATER COMPETITION.

Water competition considered in determining reasonableness of rate. *Taylor v. N. & W. Ry. Co.* 613 (617); *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (303), *In re Advances on Furniture*, 331 (332).

Water competition found to have caused the establishment of certain rates by carriers. *In re Advances on Flaxseed*, 337 (338); *In re Advances on Knitting-factory Products*, 634 (639).

Water competition considered in determining a question of undue prejudice under section 3. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

Water competition held to justify a deviation from the rule of section 4. *In re Lumber Rates*, 50 (61).

COMPETITIVE RATE.

A competitive rate is frequently lower than a reasonable rate and lower than one which the Commission could order established. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150).

COMPLAINTS.

Complaint held sufficient to put in issue a charge of undue prejudice. *Union Tanning Co. v. S. P. Co.* 112 (113).

"CONFIRM."

Explanation of phrase "confirm" engagement. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (224).

CONNECTING CARRIERS.

DISCRIMINATION IN INTERCHANGE FACILITIES.

Defendant rail carrier required to establish and maintain through routes and joint rates with complainant lighterage company so long as it maintains such joint arrangements with complainant's competitors similarly situated. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

Petition of complainant steamship company, seeking the establishment of through routes and joint rates from Seattle, Wash., to Dawson, Yukon Territory, and to other points in Canadian territory, and alleging that, as a connecting line, it was unjustly discriminated against, satisfied by defendants. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136.

to its destination by a railroad, and if he neglects to do so the liability of the railroad as a common carrier ceases and it becomes a warehouseman. In re Advances in Demurrage Charges, 314 (315).

CONSOLIDATED SHIPMENTS. *See also* CARLOAD, LESS-THAN-CARLOAD, AND ANY-QUANTITY RATES.

The Commission approves Western Classification rule applying l. c. l. rates on shipments consolidated or bulked by carriers' agents. Western Classification case, 442 (478).

Held, that the return-shipment rate applicable to empty beer packages in Southern Classification applies only from and to the points between which the original shipment moved. Such rate, therefore, was not applicable to a consolidated shipment of empty packages from a single point, when the filled packages were shipped to several points. Portner Brewing Co. v. S. Ry. Co. 659.

"CONSTRUCTIVE DEMURRAGE."

Discussion of this term. Galveston Commercial Asso. v. A. T. & S. F. Ry. Co. 216 (230).

CONTRACTS. *See also* GOVERNMENT TRANSPORTATION; LEASE.

It is not within the province of the Commission to determine the validity or legality of a contract. Greenbaum Co. v. C. & O. Ry. Co. 352 (354).

CORPSE. *See* TICKETS.

COST.

COST OF HANDLING.

In establishing a proper relation between the carload and less than carload ratings, among the factors to which consideration should be given, is the relative cost of handling. Western Classification case, 442 (608).

COST PER TON PER MILE.

A decrease in the mileage divisor makes the cost per ton per mile for a short haul relatively greater than for a long haul. Taylor v. N. & W. Ry. Co. 613 (616).

COST OF OPERATING.

There is a suggestion that the use of box cars makes for a lower operating cost because of the comparative absence of empty mileage, but there is no data of record to determine the extent of this saving, if any. North Fork Cannel Coal Co. v. A. A. R. R. Co. 241 (244).

As an element to be considered in determining the reasonableness of a rate. In re Advances on Live Stock, 63 (64).

COST OF SERVICE.

A violation of section 3 can not be predicated upon a difference in rates on non-competing articles, unless the rate on the favored article is so low as to be unremunerative and fail to carry its share of the burden of producing revenue. Bartlesville Salvage Co. v. M. K. T. Ry. Co. 672.

Considered in determining the proper classification of articles. Western Classification case, 442 (472).

From a branch-line point balanced against that for a two-line haul from another point. Baker Commercial Club v. O.-W. R. R. & N. Co. 281 (283).

While instances may arise where the single item of cost would not be controlling, in this case the cost of the service is fundamental in determining the reasonableness of a transit charge. Spiegle v. S. Ry. Co. 71 (75).

Relied upon as justification for increase in rates, In re Advances on Hops, 16 (17).

"CRATED."

Defined. Western Classification case, 442 (523).

CROSS-COUNTRY COMPETITION.

Cross-country competition considered in determining the relative reasonableness of rates. Superior Commercial Club v. G. N. Ry. Co. 342 (345); Lebanon Commercial Club v. L. & N. R. R. Co. 277 (279).

DAMAGES. See also LIMITATION OF ACTIONS.

JURISDICTION OF COMMISSION.

Section 8 makes a common carrier, subject to the act, liable to the person injured for whatever damages accrue by reason of the doing of any act prohibited or declared to be unreasonable by the statute. National Wool Growers' Assn. v. O. S. L. R. R. Co. 675 (676).

Section 9 provides that any person claiming to be damaged in accordance with the provisions of section 8 may either begin suit in court or apply to this Commission. National Wool Growers' Assn. v. O. S. L. R. R. Co. 675 (676).

The Commission is authorized to award damages only when there has been a violation of the act. Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co. 366 (367).

Whether the Commission is authorized by the law to deny reparation in a case where it has found that the rates charged complainant were unreasonable or unjustly discriminatory, or whether the granting of reparation is a judicial act, based upon a rule of law and not subject to the exercise of discretion on the part of the Commission, is a question that is reserved for further consideration. Mfrs. & Merchants' Assn. v. A. & A. R. R. Co. 116 (117).

Damages awarded on ground that rate was unreasonable without prescribing rate for future, carrier having voluntarily reduced the rate. Ball Lumber Co. v. T. & P. Ry. Co. 437 (438); Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co. 101 (102).

POLICY OF COMMISSION.

The Commission sometimes declines to award reparation on shipment, notwithstanding its holding that the rate or charge applicable thereto was unreasonable or discriminatory. See Lewis v. C. B. & Q. R. R. Co. 97 (98, 99, 100); Union Tanning Co. v. S. Ry. Co. 112 (115); Appalachia Lumber Co. v. L. & N. R. R. Co. 193 (197); Galveston Commercial Assn. v. A. T. & S. F. Ry. Co. 216 (232); Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J. 19 (21); Wharton Steel Co. v. D. L. & W. R. R. Co. 303.

BASIS OF AWARD.

Change in Rates.

Change in rates on short notice, under authority of Commission, affords no basis for reparation. Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co. 366.

Long and Short Haul.

Held that no damages can be given up to the time when the Commission passes upon the fourth section application herein involved, unless a case is made out under the third section, or unless under the first section the rate to the intermediate point has been found unreasonable. Appalachia Lumber Co. v. L. & N. R. R. Co. 193 (197).

Failure of defendants to provide in their tariffs for the payment of redemption money on account of lost commutation tickets of the punch-cancellation variety was not unreasonable or otherwise in violation of the act. *Damages denied.* *Hill v. P. R. R. Co.* 650.

Misquotation of Rates.

The misquotation of a rate by a carrier's agent is no basis for an award of reparation. *Faribault Furniture Co. v. C. G. W. R. R. Co.* 40.

Misrouting.

Damages, including demurrage charges, awarded where complainant was deprived of a reconsignment privilege through the misrouting of the carrier. *Beekman Lumber Co. v. L. Ry. & N. Co.* 171 (173).

Damages awarded for misrouting. *Conifer Lumber Co. v. L. & N. R. R. Co.* 272.

Negligence.

A caretaker of chickens, negligently permitted by carrier to start on journey free of charge, held to be entitled to reparation in the sum of the difference between the through-ticket rate and the combination of local rates to and from a point at which he was intercepted. *Ream v. S. P. Co.* 107 (111).

Overcharge.

Refund should be made where an additional charge was imposed for the use of Eastman heater cars, not ordered. In re *Advances on Potatoes*, 159 (170).

Reparation awarded for overcharge. *Struck Co. v. L. & N. R. R. Co.* 656 (658); *Davidson Bros. v. L. & N. R. R. Co.* 103 (106); *National Lumber Exporters' Assn. v. K. O. S. Ry. Co.* 78 (87); *Seaboard Refining Co. v. A. G. S. R. R. Co.* 702; *Leach v. N. P. Ry. Co.* 275 (277).

Reparation to be awarded for overcharge. *Lindsay & Co. v. G. N. Ry. Co.* 424 (428); *Wilson Bros. v. D. L. & W. R. R. Co.* 11 (13).

Posting Tariffs.

Failure to post tariff which did not contain a change in rate held not to be a basis for reparation. *Faribault Furniture Co. v. C. G. W. R. R. Co.* 40.

Preferences and Prejudices.

The imposition of demurrage charges on export cotton at Galveston, while imposing no such charges at rival ports, held to constitute undue prejudice. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (232).

Damages to be awarded for unduly preferential refrigeration charges. *Mason Bros. v. S. P. Co.* 35 (37).

Discrimination in matter of payment of allowances not found undue and damages denied. *Gund & Co. v. C. B. & Q. R. R. Co.* 326.

Rates held unduly preferential or prejudicial; reparation denied. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (152); *Lewis v. C. B. & Q. R. R. Co.* 97 (100); *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 378 (387).

Transit charge held unduly prejudicial; damages to be awarded. *Bristol Door & Lumber Co. v. N. & W. Ry. Co.* 87 (89).

Rates held unduly preferential or prejudicial; damages to be awarded. *Gilmore & Co. v. C. & N. W. Ry. Co.* 403 (406); *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (129); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (246); *Dewey Bros. Co. v. L. H. & St. L. Ry. Co.* 700.

Rates held unduly prejudicial and carriers ordered to remove the discrimination, but damages denied on the ground that complainant has not been damaged. *Union Tanning Co. v. S. Ry. Co.* 112 (115).

Reduction in Rates.

The mere fact that, within one month after shipment moved, the rate applicable thereto was reduced is not, of itself, sufficient proof of the unreasonableness of the rate in effect when the shipment moved. *Bernheim & Co. v. O. R. R. & N. Co.* 156 (158). See also *Lewis v. C. B. & Q. R. R. Co.* 97 (99); *Moore v. D. & R. G. R. R. Co.* 1 (4).

Restoration of Rate or Privilege.

The fact that a transit privilege was in effect, both before and after a shipment moved, furnishes no ground for an award of reparation. *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43).

Unreasonable Charges.

Reparation awarded for demurrage charges unlawfully assessed. *Alexander v. S. Ry. Co.* 32 (34).

Transit charge held unreasonable; damages to be awarded. *Bristol Door & Lumber Co. v. N. & W. Ry. Co.* 87 (89).

Demurrage free time period found unreasonable; damages denied. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (232).

The application of a higher aggregate charge upon a shipment of 3,200 pounds than upon a shipment of 4,000 pounds held in this case to be unreasonable. Reparation awarded. *Wright & Co. v. V. R. R. Co.* 214 (215).

Charges found unreasonable; damages awarded. *Benisch Bros. v. L. I. R. R. Co.* 439 (441); *Riverside Mills v. G. R. R.* 434 (436).

Charges found unreasonable; damages to be awarded. *Kamm & Co. v. P. Co.* 196 (202); *Paducah Cooperage Co. v. I. C. R. R. Co.* 372 (373); *Seaboard Refining Co. v. A. G. S. R. R. Co.* 702 (705).

Unreasonable Rates.

Because a rate is found unreasonable it can not be assumed the Commission will, as a matter of course, award reparation upon the basis of the rate found to be reasonable. *National Wool Growers' Asso. v. O. S. L. R. R. Co.* 675 (677).

Rates found unreasonable; damages awarded. *Arabol Mfg. Co. v. S. B. Ry. Co.* 429 (431); *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438); *Cahill Iron Works v. N. C. & St. L. Ry.* 252 (254); *Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 101 (102); *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (251); *Davidson Bros. v. L. & N. R. R. Co.* 103 (106); *Dewey Bros. Co. v. L. H. & St. L. Ry. Co.* 700; *Hafer Lumber Co. v. C. & N. W. Ry. Co.* 27 (29); *Holcker-Elberg Mfg. Co. v. C. R. I. & P. Ry. Co.* 212 (213); *Lindsay & Co. v. G. N. Ry. Co.* 424 (428); *Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co.* 8 (10); *National Lumber Exporters' Asso. v. K. C. S. Ry. Co.* 78 (87); *Switzer Lumber Co. v. K. C. S. Ry. Co.* 611 (613); *Taylor v. N. & W. Ry. Co.* 613; *Thompson v. A. T. & S. F. Ry. Co.* 174 (179); *U. S. v. S. P. Co.* 255 (257).

Rates found unreasonable; damages to be awarded. *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (26); *Griffing v. C. & N. W. Ry. Co.* 134 (135); *Marian Coal Co. v. D. L. & W. R. R. Co.* 14 (15); *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (129); *National Mohair Growers' Asso. v. A. T. & S. F. Ry. Co.* 679; *National Wool Growers' Asso. v. O. S. L. R. R. Co.* 675; *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (246).

Rates found unreasonable; damages denied. *Dupont de Nemours Powder Co. v. C. B. R. Co. of N. J.* 19 (21); *Wharton Steel Co. v. D. L. & W. R. R. Co.* 308.

The measure of damages, where an unreasonable rate has been charged, is primarily the difference between the rate paid and what would have been a reasonable rate. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (677).

In awarding reparation on the ground that an unreasonable rate was charged for the transportation of property for the Federal Government no account was taken of proper land-grant deductions, which may be determined between the parties provided by law. *U. S. v. S. P. Co.* 255 (257).

PARTIES.

The person entitled to an award of damages on the ground of the unreasonableness of a rate is the one who has actually paid the rate. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (677).

A shipper who has paid the freight charges in the first instance, but who included such charges in the invoice price of the article shipped is not entitled to damages. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19 (21).

Rates held unduly discriminatory and carriers ordered to remove discrimination, but damages denied complainant because there is no showing that he been damaged. *Union Tanning Co. v. S. Ry. Co.* 112 (115).

A shipper who had not paid the freight rate nor sustained any loss held not to be entitled to damages, although the rate charged on his shipments were found unduly discriminatory. *Evans & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (152).

Petitioners that sell f. o. b. factory, consignees paying freight, held not entitled to reparation. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (387).

BURDEN OF PROOF.

To entitle complainant to reparation from a given date on the ground that a given rate was unreasonable, the burden is on the complainant to show that the rate was unreasonable at that time—or when the rate became unreasonable. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

PRESENTATION OF CLAIM TO CARRIER.

Shippers entitled to reparation under this decision should present their claim in the first instance to the carriers, with a view to agreeing, if possible, upon the amount due. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

DEDUCTION AND PREMIUM CHARGES.

Discussed. *Western Classification case*, 442 (479).

DELAY. See also DEMURRAGE; STORAGE.

Delivering lines owe to shippers under joint rates the obligation to do what they reasonably can to avoid delays in the delivery of their traffic. *Detroit Reconsolidating case*, 392 (395).

DEMURRAGE. See also STORAGE.

IN GENERAL.

The transportation rate contemplates a certain free time within which to unload. *In re Advances in Demurrage Charges*, 314.

The principle of demurrage had its origin in connection with transportation by water. *In re Advances in Demurrage Charges*, 314 (315).

This Commission and the courts have held that demurrage charges, in connection with railroad transportation, to be in part compensation to the carrier and in part a penalty to secure the release of equipment and tracks. *In re Advances in Demurrage Charges*, 314 (315).

Demurrage is not to be based upon a fair rental value of the car. Such charge should not be sufficient in amount to work an undue hardship upon the one who occasionally has to pay it, but should be sufficient to accomplish the purpose for which it is intended. In re Advances in Demurrage Charges, 314 (315).

A free time period that is reasonable under existing conditions at one port might be unreasonable at another. Galveston Commercial Asso. v. A. T. & S. Ry. Co. 216 (230).

Advance in demurrage charges in California, not found unlawful. In re Advances in Demurrage Charges, 314.

REASONABLENESS OF CHARGE.

Minor differences in conditions might justify a difference in demurrage rules or in the demurrage free time at New Orleans as compared with Galveston, but such minor differences do not justify the utter failure to impose any demurrage at the former city while imposing such charges at the latter. Galveston Commercial Asso. v. A. T. & S. F. Ry. Co. 216 (227).

Demurrage charges of \$1 per car per day held not unreasonable where the carrier's equipment was used for storage purposes. Thompson v. A. T. & S. F. Ry. Co. 174 (178).

AVERAGE RULE.

Conditions at Galveston call for the application of an average demurrage rule, and four days is found to be a just period as the basis for computing such average demurrage. Galveston Commercial Asso. v. A. T. & S. F. Ry. Co. 216 (231).

CONSTRUCTIVE DEMURRAGE.

Discussed. Galveston Commercial Asso. v. A. T. & S. F. Ry. Co. 216 (230).

NOTICE.

There being no proof of an agreement on the part of the carrier to notify complainant of the arrival of shipments consigned to another party, held that demurrage was properly assessed where notice was sent to the consignee named in the bill of lading. Alexander v. S. Ry. Co. 32.

RECIPROCAL DEMURRAGE.

The reciprocal feature of the California state demurrage rule imposes penalties upon the carriers for failure to supply cars upon demand of shippers, and it is therefore essential that they have a full and dependable car supply. In re Advances in Demurrage Charges, 314 (321).

UNLOADING.

The Commission has held that when the vessel is at the dock the car will be treated as unloaded as of the day ordered to be dumped. Galveston Commercial Asso. v. A. T. & S. F. Ry. Co. 216 (231).

SPECIFIC INSTANCES.

Controversy as to rate: Demurrage accruing during a delay caused by a controversy as to the rate applicable to a reforwarding movement, held, to have been properly assessed against the shipper who was at fault. Platten Produce Co. v. C. & N. W. Ry. Co. 30.

Diversion: Reparation awarded for demurrage charges accruing as a result of carrier's failure to divert shipment as ordered. Alexander v. S. Ry. Co. 32 (34).

Diversion: Demurrage charges accruing at a diversion point through no fault of carrier, held to have been properly assessed. Deeves Lumber Co. v. A. & V. Ry. Co. 42 (43).

Export shipments: At least 6 days' free time should be allowed at Galveston upon export business. Galveston Commercial Asso. v. A. T. & S. F. Ry. Co. 216 (230, 231).

Export shipments: The ship agent is the only party upon whom demurrage charges on export cotton moving through Galveston can properly be made to rest. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (227).

Facilities: Due to lack of facilities for accommodating an unusual number of cars containing an unusual quantity of coal for delivery upon its private siding, complainant was subjected to certain demurrage charges. *Cathedral of the Incarnation v. L. I. R. R. Co.* 399.

Facilities: Defendant has a hand derrick at its Atkins yards, East New York, for unloading heavy freight, that is not of sufficient capacity to unload all heavy freight received here within 48 hours of arrival. Collection of demurrage charges on heavy freight which was delayed in unloading beyond that time, under such circumstances found unreasonable. Reparation awarded. *Benisch Bros. v. L. I. R. R. Co.* 439.

Misrouting: Damages awarded for demurrage accruing through misrouting of carrier. *Beekman Lumber Co. v. L. Ry. & N. Co.* 171 (173).

Switching: Demurrage charges occasioned by detention of a car of barrel heading at Cincinnati, Ohio, awaiting payment of freight charges thereon prior to a switching movement, not found to have been unlawful or unreasonable. *Hollingshead & Blei Co. v. P. Co.* 38.

DENSITY OF TRAFFIC.

A dissimilarity in the density of traffic and of other conditions renders unfair a comparison of rates from central freight association territory to western trunk line territory with rates from St. Louis to Texas. *Even & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150).

The fact that canal coal moves in single car lots while there is a trainload movement of bituminous coal, together with other facts of record, justify a higher rate on the former than on the latter article. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (244, 245).

Trainload movements. *Taylor v. N. & W. Ry. Co.* 613 (617).

That traffic moves in trainload lots from one point and in smaller lots from another point, considered in determining the relative reasonableness of rates. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308).

Difference in density of traffic considered in determining relative reasonableness of rates. *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (654).

Density of traffic, as an element to be considered in determining the reasonableness of a rate. *In re Advances on Live Stock*, 63 (64).

Referred to. *Dewey Bros. Co. v. L. H. & St. L. Ry. Co.* 700 (701).

DESIRABILITY OF THE TRAFFIC.

Considered in determining the proper classification of articles. *Western Classification case*, 442 (474).

DIFFERENTIALS.

Discussed. *Chamber of Commerce of Beaumont v. T. & N. O. R. R. Co.* 695; *City of Crawford v. C. & N. W. Ry. Co.* 259 (261); *In re Advances on Knitting-factory Products*, 634 (636); *In re Advances on Manganese Ore*, 663 (667); *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357; *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (127); *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (654); *Superior Commercial Club v. G. N. Ry. Co.* 342 (343); *Taylor v. N. & W. Ry. Co.* 613 (614).

"DIRECT TO DRAYS."

This phrase does not include a delivery upon a platform and not to drays. *Wilson Bros. v. D. L. & W. R. R. Co.* 11.

Advancing eastbound rates on potatoes to the level of westbound rates, not justified. *Advance condemned.* In re *Advances on Potatoes*, 247.

The existence of routes in both directions from a point located about the center of a line, held to justify a higher rate from such point than from localities east or west thereof, even when the traffic is handled through such point. In re *Lumber Rates*, 50 (56).

DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES; CONNECTING CARRIERS.

Section 2 of the act prohibits charging to one a greater or less compensation than is charged to another for a like and contemporaneous service under substantially similar circumstances and conditions. In re *Advances in Demurrage Charges*, 314 (323).

It was the purpose of section 2 to enforce equality between shippers, and it prohibits any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor. In re *Advances on Manganese Ore*, 663 (668).

Lease of railroad-owned elevator to persons owning property passing through such elevator and payment of allowance to such lessees, held unlawful. In re *Keystone Elevator Co.* 618.

Dual rates: (1) An open rate, and (2) a lower rate when the coke was for use in blast furnaces—were maintained to Chicago, Ill.; only the open rate to Carondelet, Mo.; held not a violation of section 2. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 183.

Passes: Refusing to grant pass to a caretaker of chickens held not to constitute unjust discrimination. *Ream v. S. P. Co.* 107 (110).

Redemption of lost tickets: Failure to provide in tariffs for redemption of lost tickets of the punch-cancellation variety held not to be unjustly discriminatory. *Hill v. P. R. R. Co.* 650.

DISTANCE. *See also* THROUGH RATES.

Distance considered in determining reasonableness of rates. *Norris v. St. L. & S. F. R. R. Co.* 416 (423); In re *Lumber Rates*, 50 (55); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

Distance as an element affecting rates, discussed. *Superior Commercial Club v. G. N. Ry. Co.* 342 (348); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (24); In re *Advances on Hops*, 16 (17); *Davidson Bros. v. L. & N. R. R. Co.* 103 (104).

Distance is necessarily ignored somewhat under the grouping system. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (309).

For long-distance movement, the rate should not increase for the last miles by amount of the local rate. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (194).

On long hauls—as a haul for 600 or 1,000 miles—the reason for allowing a higher charge for a two-line than for a one-line haul largely disappears. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633).

On a line haul a difference in mileage of 1.41 miles is of no consequence, but in this case the delivering road performs only a terminal delivery service. *Gilmore & Co. v. C. & N. W. Ry. Co.* 403 (405).

A difference of 44 miles in distance held not to justify a difference of 55 cents per ton in rates on coal. *Union Tanning Co. v. S. Ry. Co.* 112 (115).

Average haul considered in determining reasonableness of rates. *Taylor v. N. & W. Ry. Co.* 613 (617); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

DISTANCE—Continued.

Distance rates recommended by Commission. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (309); *In re Advances on Live Stock*, 63 (65); *Superior Commercial Club v. G. N. Ry. Co.* 342 (348).

Permission given carriers to change from distance to group basis of constructing rates. *In re Advances on Cottonseed Products*, 237.

Principle of making rates with relation to short-line distance. *Superior Commercial Club v. G. N. Ry. Co.* 342 (345).

DISTURBANCE OF ADJUSTMENT. See ADJUSTMENT OF RATES.**DIVERSION. See also TRANSIT PRIVILEGES; RECONSIGNMENT; RESHIPING.**

Allegation that complainant was discriminated against by the denial to its traffic of certain diversion privileges, not sustained. *Thompson v. A. T. & S. F. Ry. Co.* 174.

DIVISION OF THROUGH RATES.**REASONABLENESS OF DIVISIONS.**

The Commission can see little in comparisons of divisions received by carriers east of the Mississippi River with those accruing to the line west, in the present case. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (383).

FIXING DIVISIONS.

Divisions between carriers are a matter for bargaining between them, and only in case they can not agree is the Commission warranted in attempting to fix them. *Wichita Board of Trade v. A. T. & S. F. Co.* 625 (631).

While reducing a joint through rate, the Commission does not at this time undertake to establish the divisions. *Lindsay & Co. v. G. N. Ry. Co.* 424 (428).

MEASURE OF RATE.

Where divisions are determined by highly competitive conditions, they throw no light on the reasonableness of joint rates. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

The Commission has many times expressed the view that the division received by a carrier as its share of a joint rate is not conclusive evidence of the unreasonableness of the joint rate involved. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

DOCKS. See EXPORT AND IMPORT; WAREHOUSES.**DOUBLE-DECK CARS. See also MINIMUM CARLOAD WEIGHT.**

Advances on sheep and goats in single and double deck cars, from New Mexico to Kansas City, Mo., not found unreasonable. *In re Advances on Live Stock*, 63 (66).

DUNNAGE. See CAR FITTING.**EASE OF HANDLING.**

Considered in determining the proper classification of articles. *Western Classification case*, 442 (473).

EASTMAN CAR.

In re Advances on Potatoes, 159 (160).

ELEVATION.**ALLOWANCES.**

Because of the existence of competitive conditions at the favored point, held; that it was not a violation of section 3 to grant an elevation allowance at one point while denying it at another. *Gund & Co. v. C. B. & Q. R. R. Co.* 326 (329).

Defendant carrier's refusal to pay an elevation allowance at Black Rock, N. Y., for which it had no tariff authority, not found to have been discriminatory or otherwise in violation of the law. *Ryley v. W. R. R. Co.* 210.

Lease of railroad-owned elevator to persons owning property passing through such elevator and payment of allowance to such lessees, held unlawful. In re Keystone Elevator, 618.

CHARGES.

Held, that the Milwaukee Company receives double pay for the service of transfer, which is manifestly unjust, and that its tariff should be so modified as to provide that when that company collects a transfer charge from the eastern lines no transfer charge shall be made against the grain dealer. Reparation to be awarded. *Kamm & Co. v. P. Co.* 198.

EMIGRANT MOVABLES.

Denial of free transportation to a caretaker of chickens, not found unreasonable or unduly discriminatory. *Ream v. S. P. Co.* 107.

Charges assessed on an emigrant movable outfit, found unreasonable. *Leach v. N. P. Ry. Co.* 275.

EMPTY-CAR MOVEMENT.

The Commission is not prepared to say that the ratio of empty to loaded movement on hay is as great as upon other commodities. In re *Advances on Hay*, 680 (684).

Considered in determining relative reasonableness of rate. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308).

Empty-car haul considered. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245).

Empty haul of refrigerator cars to the west. In re *Advances in Demurrage Charges*, 314 (318).

Discussed. In re *Advances on Hay*, 680 (684).

ENGAGEMENT.

The contract of the ship agent with the interior shipper for the shipment of his freight to the foreign destination, is usually called an engagement. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 218 (219).

EQUIPMENT. See **CARS; CAR FURNISHING; CAR DISTRIBUTION; HEATING; RETURN OF CARS; WAREHOUSES.**

ESTOPPEL. See also **CHANGE IN RATES.**

It is beyond the power of the Commission to direct the restoration of the old rate if advance is reasonable. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (313).

That a rate has been in force for several years without protest on the part of shippers does not justify its maintenance if it is unreasonable. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19 (20).

The fact that for many years the defendant carriers have undertaken to furnish such service, considered in determining the obligation of defendants to furnish protection against cold during the winter months. In re *Advances on Potatoes*, 159 (163).

If the present advance leaves the rates reasonable, a former increase in the same rates can not be held to constitute an estoppel. In re *Advances on Hay*, 680 (684).

That the prior lower rates were in effect for a long time and that complainants invested money on account of them, does not prove that the prior rates were reasonable and that the present higher rates are excessive. In re *Advances on Furniture*, 331 (336).

DUES.

Evidence held insufficient to base a finding thereon. *Moore v. D. & R. G. R. R. Co.* 1 (3).

Allegation that charges were assessed on an erroneous weight basis not found to be sustained by the evidence. *Hafer Lumber Co. v. C. & N. W. Ry. Co.* 27 (29).

Evidence held insufficient to base a finding as to reasonableness of a rate. *Lewis v. C. B. & Q. R. R. Co.* 97 (99).

Facts adduced from Commission's examination and analysis of defendant carriers' report, considered. *Marian Coal Co. v. D. L. & W. R. R. Co.* 14 (15).

EXPLOSIVES.

Argument made that one-half of the rate on dynamite is for the transportation service and the other half for risk or insurance. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19 (20).

Rules governing transportation of explosives are no more onerous upon defendant than upon other carriers. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19 (20).

EXPORT AND IMPORT.

EXPORT.

Through export bills of lading can only issue as the result of an agreement between the railway and the steamship. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (222).

While export rates are ordinarily lower than domestic rates, this is due to competitive conditions between the ports and not to the fact that the cost of service in export shipments is less than on domestic shipments. *National Lumber Exporters' Asso. v. K. C. S. Ry. Co.* 78 (85).

IMPORT.

The joint through rate of 18 cents on imported logs from Mobile to Indianapolis is applicable only when the logs move direct to Indianapolis. *Talge Mahogany Co. v. S. Ry. Co.* 44 (45).

Rates on imported Spanish cedar logs from New York to Knoxville, Tenn., not found to be in violation of the act. *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653.

Importers at New York, who take manganese ore from the custody of the carrier at ship's side or at the dock, unless it is put in a custom-bonded warehouse, must pay domestic rates thereon, while under the existing rates, protestant may grind his ore at Elizabethport, N. J., and ship it therefrom at the import rates held, that this constitutes an undue preference. *In re Advances on Manganese Ore*, 663 (669).

EXPRESS COMPANIES. See also TRANSFER COMPANIES.

Complaint against express companies satisfied and dismissed. *Anacostia Citizens Asso. v. B. & O. R. R. Co.* 411.

FACILITIES. See also CARS; CAR DISTRIBUTION; CAR FURNISHING; BULKY ARTICLES; LEASE; DEMURRAGE; STORAGE; WAREHOUSES; WHEARVES.

Where a carrier provides a derrick for unloading heavy freight it becomes a facility. *Benisch Bros. v. L. I. R. R. Co.* 439 (440).

One way in which to increase the facilities is their fullest and freest possible use. *In re Advances in Demurrage Charges*, 314 (323).

A defendant can not be required to be at all times prepared to furnish more than the reasonable facilities necessary for the usual amount of business done at a particular point upon its line. *Cathedral of the Incarnation v. L. I. R. R. Co.* 399.

FALSE BILLING.

Every effort of the carriers to compel accuracy and honesty in description of freight deserves support; conscious misrepresentations are misdemeanors and criminal and should be rigorously suppressed. *Western Classification case*, 442 (476).

FILING TARIFFS.

Special rates or fares for transportation of property or troops for the Federal Government need not be filed. *U. S. v. S. P. Co.* 255 (258).

Where the through rates and charges must necessarily be made up of the separately established rates and charges, because there is no joint tariff, the law requires carrier subject to the act to file such separately established rates and charges. *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5 (7).

FOLLOW-LOT SHIPMENTS.

Follow lots should be marked by the shipper. But where the shipment could be loaded in a car of the size ordered by the shipper and two cars are furnished the marking should be done by the carrier. *Western Classification case*, 442 (485).

It is not unreasonable to restrict the follow-lot privilege to machinery where the minimum is 30,000 pounds or more. *Western Classification case*, 442 (494).

Balance lot, discussed. *Moore v. D. & R. G. R. R. Co.* 1 (3).

Part car lot, discussed. *Thompson v. A. T. & S. F. Ry. Co.* 174 (178).

FOREIGN CARRIERS.

The Commission has no jurisdiction of railroads and steamship lines located, owned, and operated entirely in adjacent foreign country. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (140).

The Commission has no jurisdiction over rates for transportation wholly in Canadian territory. *Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co.* 376 (378).

The Commission has no jurisdiction over railroads operating in Mexico. *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5.

GATEWAYS.

Gateways discussed. *City of Crawford v. C. & N. W. Ry. Co.* 259 (263); *Lebanon Commercial Club v. L. & N. R. R. Co.* 277 (280).

GOVERNMENT TRANSPORTATION.

Troops and property of the government may be carried at special rates; need not be posted or filed. *United States v. S. P. Co.* 255 (258).

Land-grant deductions from tariff rates made on property transported by the Southern Pacific road for the Federal Government. *United States v. S. P. Co.* 255 (257).

GRADED RATES. See also DISTANCE.

Rates graded with distance, discussed. In re *Advances on Hops*, 16 (17); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (24).

GRADES.

Severity of operating conditions caused by grades, considered in determining reasonableness of rates. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245); *Multnomah Lumber & Box Co. v. S. P. Co.* 123, (128); *Union Tanning Co. v. S. Ry. Co.* 112 (115).

HAULAGE SERVICE.

Discussed. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (309).

HEARING.**ISSUES.**

The determination of broad questions should be in some comprehensive proceeding to which the responsible carriers can be made parties. In re *Advances in Class Rates*, 268 (271).

HEARING—Continued.**Issues—Continued.**

Questions not properly in issue, not passed upon. In re *Advances on Manganese Ore*, 663 (667); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (246); *Spigle v. S. Ry. Co.* 71 (73); In re *Advances in Class Rates*, 268 (271); In re *Southern Ry. Co.* 407 (410).

Complaint held sufficient to charge undue prejudice. *Union Tanning Co. v. S. Ry. Co.* 112 (113).

REHEARING.

Rehearing not denied merely because of form of petition. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 266 (267).

Rehearing. *Fels & Co. v. P. B. R. Co.* 154; *Gund & Co. v. C. B. & Q. R. R. Co.* 326.

HEATING.

No apparent distinction between duty to furnish heating and duty to furnish refrigeration. In re *Advances on Potatoes*, 159 (163).

Commission approves western classification rule No. 31, relating to heater-car service. *Western Classification case*, 442 (497).

HIGH-GRADE ARTICLES.

Copper. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (363).

INDUSTRIAL RATES. See also ESTOPPEL; COMMERCIAL AND ECONOMIC CONDITIONS.

That existing rates are necessary to develop and protect the milling interests on a particular line is not of itself a justification for these rates. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (632).

That there has been little or no movement under a given rate alleged to have been established at a low figure in order to stimulate the movement of a given article, is no justification for advancing such rate, where it is not shown that such rate was unusually low. In re *Advances on Potatoes*, 247 (248).

INTERCORPORATE RELATIONS.

The *Pennsylvania R. R. Co.* and the *P. B. & W. R. R. Co.* are distinct corporations. *Fels & Co. v. P. B. R. Co.* 154 (155).

INTERMEDIATE POINTS. See also PREFERENCES AND PREJUDICES; LONG AND SHORT HAUL.

Point raised that a station off the main line of a carrier is not an intermediate point. *Lewis v. C. B. & Q. R. R. Co.* 97 (98).

Intermediate points take the rate to the first junction point beyond in accordance with the usual practice in central freight association territory. In re *Advances on Drain Tile and Sewer Pipe*, 688 (691).

INTERSTATE COMMERCE. See also FOREIGN COMMERCE; STATE COMMERCE.

A shipment between two points in the same state, moving partly through another state, is interstate commerce. *National Lumber Exporters' Assn. v. K. C. S. Ry. Co.* 78 (81).

A rate, though applying between two points in the same state, is interstate where the route passes through part of another state. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281.

INTERSTATE COMMERCE COMMISSION.

Is an administrative body. Need not first determine subject matter to be within its jurisdiction, but affirmative relief can not be granted unless jurisdiction is definitely ascertained. *Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co.* 120 (121).

establishes the rate, and the Commission, when it revises that rate, substitutes its judgment for that of the traffic official. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (877).

JUNCTION POINTS.

When it is necessary in order to avoid violations of the fourth section of the act or to properly meet cross-country competition, junction points of origin may consistently be placed in small groups. *Superior Commercial Club v. G. N. Ry. Co.* 342 (346).

JURISDICTION OF COMMISSION.

COMMERCE SUBJECT.

The Commission has jurisdiction over a shipment between two points in the same state, which passes, en route, through another state. *National Lumber Exporters' Assn. v. K. C. S. Ry. Co.* 78 (81); *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281.

The Commission has no jurisdiction over intrastate rates. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (647).

The Commission has jurisdiction of carriers operating in Alaska. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136.

CARRIERS SUBJECT.

Lighterage company held to be a common carrier subject to the act. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

The Commission has no jurisdiction over lines operating wholly in a foreign country. *Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co.* 376 (378); *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (140); *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5.

The Commission has no jurisdiction over a common-carrier transfer company. *Anacostia Citizens Assn. v. B. & O. R. R. Co.* 411 (414).

The Commission has no jurisdiction over ocean carriers. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (225).

Wharf company held not to be a common carrier subject to the act. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (140).

RATES.

The Commission is warranted in fixing divisions of joint rates only when the carriers can not agree. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

RULES, REGULATIONS, AND PRACTICES.

A transit privilege is a regulation or practice affecting a rate of which the Commission has jurisdiction. *Spiegle v. S. Ry. Co.* 71 (73).

The Commission has large supervisory powers over the classification of freights. *Western Classification case*, 442 (459).

DAMAGES.

The Commission is authorized to award damages only when there has been a violation of the act. *Wisconsin Lime & Cement Co. v. C. C. C. & St. L. Ry. Co.* 366 (367).

Damages awarded where no rate was prescribed for the future. *Coffeyville Vitriified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 101 (102); *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438).

Whether the Commission is authorized to deny damages where it has found that a rate charged was unreasonable or unjustly discriminatory, not decided. *Mfrs. & Merchants' Assn. v. A. & A. R. R. Co.* 116 (117).

CONTRACTS.

It is not within the province of the Commission to determine the validity or legality of a contract. *Greenbaum Co. v. C. & O. Ry. Co.* 352 (354).

JURISDICTION OF COMMISSION—Continued.

TRAIN SERVICE.

Jurisdiction of Commission to require restoration of sleeping-car service, not decided. *Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co.* 120 (122).

JUSTIFICATION OF ADVANCE. *See* ADVANCE IN RATES.KNOCKED DOWN. *See* PACKING.

LEASE.

The lease of a railroad-owned elevator at North Philadelphia to the Keystone Elevator & Warehouse Co., and the payment by the railroad of a certain elevation allowance to such elevator company, held unlawful. *In re Keystone Elevator Co.* 618.

Lease of railroad-owned elevator to private persons. *Kamm & Co. v. P. Co.* 198 (199).

Lease of railroad-owned warehouse to shipper. *Wilson Bros. v. D. L. & W. R. R. Co.* 11.

Lease of one railroad by another. *In re Lumber Rates*, 50 (53).

LEGAL RATES AND CHARGES.

A carrier is bound to charge neither more nor less nor different compensation to any shipper. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (140).

The terms of the tariffs filed and published are the sole guide in assessing transportation charges. *Johnson v. A. T. & S. F. Ry. Co.* 207 (208).

Regardless of the rate quoted by a carrier's agent, the published rate is the one that must be paid. *Faribault Furniture Co. v. C. G. W. R. R. Co.* 40 (41).

Charges held to have been properly assessed notwithstanding the fact that the tariff, containing the rate and minimum weight, was not posted. *Faribault Furniture Co. v. C. G. W. R. R. Co.* 40.

The rate in effect at the time a shipment begins to move is the rate lawfully applicable. *Transit case*, 130 (134).

A tariff canceling a transit privilege does not affect shipments that began to move prior to such cancellation. *Transit case*, 130 (134).

Where there are two rates—one a joint rate and the other a combination rate—the joint rate is the legal rate. *Arabol Mfg. Co. v. S. B. Ry. Co.* 429 (431).

In the absence of a reconsignment privilege applicable to a given shipment, held that the sum of the locals to and from the point of reshipping is the legal rate. *Talge Mahogany Co. v. S. Ry. Co.* 44 (45); *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43); *Platten Produce Co. v. C. & N. W. Ry. Co.* 30 (31).

In the absence of a specific rate, on liquid tree spray, held that the lawfully applicable rate was a rate on insect poison, n. o. s., and not a rate on liquid sheep dip. *Bernheim & Co. v. O. R. R. & N. Co.* 156 (157).

A commodity rate on wooden boxes, set up, does not remove wooden beer-bottle carriers from the classification. *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (250).

A specific rating applies rather than a general rating in the same classification, even though the general rating be lower. *Western Classification case*, 442 (587).

Interior house trimmings "in the white" in southern classification held not to include trimmings which have been treated before shipment to a coat of priming or filler and a coat of shellac. *Struck Co. v. L. & N. R. R. Co.* 656.

While cannel coal may properly be given a higher rate than bituminous, in the absence of a cannel-coal rate, the bituminous rate would apply to cannel coal. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (244).

Rocking chairs having no parts commonly known as bases are not entitled to the rate named on rocking chairs "base detached, taken apart, and tied to back." *Railroad Commissioners of Montana v. C. B. & Q. R. R. Co.* 371.

ern classification applies only from and to the points between which the original shipment moved. *Portner Brewing Co. v. S. Ry. Co.* 659.

Defendant's tariff provided that track-storage charges should apply "upon carload freight for delivery from cars direct to drays." Complainant's freight is delivered upon a platform of a warehouse and not to drays. Held, that the assessment of track-storage charges against complainant's shipments was illegal. Reparation awarded. *Wilson Bros. v. D. L. & W. R. R. Co.* 11.

Tariffs of the Santa Fe system not found to have provided for the absorption of switching charges at Hutchinson, Kans., on traffic milled in transit at that point. *Hutchinson Mill Co. v. A. T. & S. F. Ry. Co.* 180.

Where there is an interstate rate between points in the same state, such rate, and not a lower state rate, is the proper rate to be used in making up a combination through rate in the absence of a joint rate. *Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 101 (102).

LIGHT ARTICLES.

Standard car for. *Western Classification case, 442 (479).*

LIGHTERAGE COMPANIES.

A lighterage company, which offers its services to the general public for hire as a common carrier, held to be a common carrier subject to the act. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

Lighterage company held to be entitled to through routes and joint rates with a rail line so long as such rail line makes similar joint arrangements with complainant's competitors. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

Lighterage, mentioned. In re *Advances on Manganese Ore*, 663 (664).

LIMITATION OF ACTIONS.

The statute provides that no order for reparation shall be made unless the claim is filed with the Commission within two years from the time the cause accrues. *National Wool Growers' Asso. v. O. S. L. R. R. Co.* 675 (677).

Without regard to the date of payment of charges, the cause of action of a shipper accrues when a shipment is delivered. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 266 (267).

Claims presented to the Commission more than two years subsequent to the delivery of the shipment to the consignee are barred by the statute of limitations. *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (250); *Switzer Lumber Co. v. K. C. S. Ry. Co.* 611.

LIMITATION OF LIABILITY.

The removal of the valuation clause from western classification item relating to cattle or sheep dip, approved by the Commission. *Western Classification case, 442 (555).*

LINE HAUL.

The Commission has held that on hauls as long as 600 and 1,000 miles the reason for allowing a higher charge for a two-line than for a one-line haul largely disappears. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633).

That the haul from one point is over a single line while the hauls from other points are over several lines, considered in determining the relative reasonableness of rates. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (283).

One and two line hauls, discussed. *Lebanon Commercial Club v. L. & N. R. R. Co.* 277 (279).

LINED CARS. *See also* CAR FITTING.

No higher charge should be imposed for the reconsignment of lined than for ordinary cars not lined. In re *Advances on Potatoes*, 159 (170).

LIVE STOCK.

The term "live stock" used in a tariff providing for the free transportation of a caretaker does not include a caretaker of chickens. *Ream v. S. P. Co.* 107.

LOADING AND UNLOADING.

The idea of carload rates is that the consignees will unload and that freight shipped under such rates will not be required to pass through the carrier's freight houses. In re *Advances in Demurrage Charges*, 314 (317).

Under the terms of official classification carload freight must be loaded and unloaded by the shipper or owner. *Bagley & Co. v. P. M. R. Co.* 698 (699).

Where a carrier loads a consignment, it is liable in damages for a failure so to load as to obtain the lowest tariff rate. *Leach v. N. P. Ry. Co.* 275 (276).

Charges assessed on an emigrant movable outfit, including 15 head of live stock, loaded into a single car, found unreasonable in that they exceeded the tariff charges for two cars of emigrant movables. Damages awarded. *Leach v. N. P. Ry. Co.* 275.

Where a transit charge is named by the 100 pounds, the loading of the car is an important factor in determining the reasonableness of the charge. *Spiegle v. S. Ry. Co.* 71 (76).

Manner of loading considered in determining the reasonableness of rates. *Western Classification case*, 442 (472); In re *Advances on Hay*, 680 (683); *North Fork Cannel Coal Co. v. A. A. R. Co.* 241 (244).

LOCAL RATES.

Discussed. In re *Advances in Class Rates*, 268 (271).

LOCALITIES.

Acampo, Cal. Icing, 35.

Acme, Tex., from Louisiana. Lumber, 437.

Akron, Ohio, from Stanley, Ky. Dried grain, 700.

Alabama from Dalton, Ga. Lumber, 22.

Alaska from Seattle, Wash. Through routes and joint rates, 138.

Albuquerque, N. Mex., to the east. Wool, 185.

Alexandria, Va., from Charlotte, N. C. Empty beer packages, 669.

Alma, Nebr., from Colorado. Coal, 97.

Anacostia, D. C. Pick-up and delivery service, 411.

Anaheim, Cal., to El Paso, Tex. Chili pepper, 233.

Appalachia, Va., to Ohio, Michigan, and Pennsylvania. Lumber, 193.

Appalachia fields, Va., to North Carolina. Coal, 112.

Arizona from Espanola, N. Mex. Apples, 174.

Arkansas from Chicago territory. Knitting-factory products, 634.

Arkansas to Ohio River crossings. Lumber, 116.

Ashdown, Ark., from Stables, La. Lumber, 611.

Astoria, Oreg., to California. Box shooks, 123.

Atascadero, Cal., from Huachuca, Ariz. Horses and mules, 255.

Athertonville, Ky., to Mobile, Ala., and New Orleans, La. Whisky in glass, 397.

Atkins yards, East New York, from Barre, Vt. Granite, 439.

Atlanta, Ga., to St. Louis, Mo., and Memphis, Tenn. Empty barrels, 641.

Atlantic City, N. J., from Philadelphia, Pa. Punch-cancellation ticket, 650.

Augusta, Ga., to Lockland, Ohio. Cotton-factory sweepings, 434.

Baker City, Oreg., to Vale, Oreg., Weiser and Boise, Idaho. Class rates, 231.

Barre, Vt., to Atkins yards, East New York. Granite, 439.

Bartlesville, Okla., to St. Louis, Mo. Scrap iron, 672.

Beaumont, Tex., from St. Louis, Mo. Vegetables, 330.
 Bedford, N. Y., to Carthage, N. Y. Sizing, 429.
 Bell Buckle, Tenn., from Dalton, Ga. Lumber, 22.
 Belle Rive, Ill., to Cincinnati, Ohio. Sunflower seed, 48.
 Bellingham, Wash., to Canada. Lumber, 376.
 Benton Harbor, Mich., to Chicago, Ill. Furniture, 331.
 Big Four, Colo., to Alma, Nebr. Coal, 97.
 Big Lake, Wash., to Canada. Lumber, 376.
 Birdsboro, Pa., from Ringwood and Wharton, N. J., and Fort Montgomery, N. Y.
 Iron ore, 303.
 Black Rock, N. Y. Elevation, 210.
 Boise, Idaho, from Baker City, Oreg. Class rates, 281.
 Boston, Mass., from San Diego, Cal. Passenger and corpse, 207.
 Brandon, Miss., to Chicago, Ill. Lumber, 42.
 Brewton, Ala., to New Haven, Conn. Lumber, 272.
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 Bristol, Va.-Tenn. Transit privilege, 87.
 Brockport, Ky. Fourth section relief, 50.
 Brooklyn, 25th St. Terminal, N. Y. Dray charge, 11.
 Buchanan, Mich., to Chicago, Ill. Furniture, 331.
 Buffalo group to Ohio and Indiana. Petroleum Oil, 349.
 Buffalo-Pittsburgh territory from Cumberland Valley. Lumber, 407.
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 Burlington, Iowa, to Hotchkiss, Colo. Furniture, 1.
 Cairo, Ill., from the south. Lumber, 50.
 Cairo, Ill., from the south and Arkansas. Lumber, 116.
 California. Demurrage charges, 314.
 California terminals to El Paso, Tex. Chili pepper, 233.
 California to Crawford, Nebr. Fruits and Vegetables, 259.
 California from Espanola, N. Mex. Apples, 174.
 California from Oregon. Box shooks, 123.
 Canada from Washington. Lumber, 376.
 Canadian, Tex., to Guthrie, Okla. Sleeping-cars, 120.
 Cannel City, Ky., to central freight asso. territory. Cannel coal, 241.
 Canton, N. C., from Virginia. Coal, 112.
 Carolina territory to Pacific coast. Furniture, 379.
 Carondelet, Mo., from West Virginia. Coke, 183.
 Carthage, N. Y., from Bedford, N. Y. Sizing, 429.
 Catasauqua, Pa., from Ringwood and Wharton, N. J., and Fort Montgomery and
 Sterlington, Pa. Iron ore, 303.
 Central freight asso. territory from Buffalo group. Petroleum products, 349.
 Central freight asso. territory from Kanawha district, Ky. Coal, 241.
 Central freight asso. territory from Stanley, Ky. Dried grain, 700.
 Central freight asso. territory to various destinations. Drain tile, 688.
 Charlotte, N. C., to Alexandria, Va. Empty beer packages, 659.
 Chattanooga, Tenn., from Dalton, Ga. Lumber, 22.
 Chattanooga, Tenn., from Louisville, Ky. Interior house trimmings, 656.
 Chattanooga, Tenn., from Panama, Mo. Hay, 32.
 Chattanooga, Tenn., to San Francisco, Cal. Sink and laundry tubs, 262.
 Cherryvale, Kans., to Dermott, Ark. Brick, 101.
 Chicago, Ill., from Brandon, Miss. Lumber, 42.
 Chicago, Ill., from Indiana and Michigan. Furniture, 331.

Chicago, Ill., from Minnesota. Flaxseed, 337.
 Chicago, Ill., from Northwestern states. Hay, 680.
 Chicago, Ill., to Portland, Oreg. Liquid tree spray, 156.
 Chicago, Ill., to Rose Hill station, Ill. Coal, 403.
 Chicago, Ill., to Sioux City, Iowa and Missouri. Fourth section relief, 93.
 Chicago territory to Arkansas. Knitting-factory products, 634.
 Christiana, Tenn., from Dalton, Ga. Lumber, 22.
 Cincinnati, Ohio. Demurrage, 38.
 Cincinnati, Ohio, from Illinois. Sunflower seed, 48.
 Cincinnati, Ohio, from New York, N. Y. Imported logs, 653.
 Cincinnati, Ohio, from Oklahoma. Cottonseed and inedible tallow, 237.
 Cincinnati, Ohio, from Tustin, Mich. Barrel headings, 38.
 Clear Fork branch to the Buffalo-Pittsburgh territory. Lumber, 407.
 Clear Lake, Wash., to Canada. Lumber, 376.
 Cleveland, Ohio, from Louisiana and Texas. Cottonseed, 702.
 Coatesville, Pa., from Ringwood and Wharton, N. J., and Fort Montgomery, N. Y.
 Iron ore, 303.
 Coffeyville, Kans., to Joliet, Ill. Petroleum, 374.
 Colorado to Alma, Nebr. Coal, 97.
 Colorado to Kansas City, Mo. Live stock, 63.
 Colorado to Mississippi River and east. Potatoes, 247.
 Copperhill, Tenn., from Knoxville, Tenn. Dynamite, 19.
 Council Bluffs, Iowa, to Missouri River and west. Lumber, 27.
 Cowan, Tenn., from Dalton, Ga. Lumber, 22.
 Crawford, Nebr., from Louisiana, Texas, Oregon, Utah, Idaho, and California.
 Fruits and vegetables, 259.
 Cumberland Valley of the L. & N. to Buffalo-Pittsburgh territory. Lumber, 407.
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 Dallas, Tex., from Joliet, Ill. Automobile wind-shield frames, 212.
 Dalton, Ga., to Alabama and Tennessee. Lumber, 22.
 Dante field, Va., to North Carolina. Coal, 112.
 Danville, Ill., to Englewood, Ill. Paving brick, 366.
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 Decherd, Tenn., from Dalton, Ga., Lumber, 22.
 Delafield, Ill., to Cincinnati, Ohio. Sunflower seed, 48.
 Dermott, Ark., from Cherryvale, Kans. Brick, 101.
 Des Moines, Iowa, from Minneapolis, Minn. Beer-bottle carriers, 249.
 Detroit, Mich. Reconsigning charge, 392.
 Detroit, Mich., to New York, N. Y. Tobacco, 698.
 Detroit, Mich., from Upper peninsula of Michigan. Copper, 357.
 Duluth, Minn., to Chicago, Ill. Flaxseed, 337.
 Duluth, Minn., from South and North Dakota, Iowa, and Minnesota. Grain, 342.
 Eagle Pass, Tex., to Mexico. Hay, 5.
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 East Cambridge, Mass., from New Haven, Conn. Lumber, 272.
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 Eastern points from California. Refrigeration charges, 35.
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 Eastern points from Washington and Oregon. Hops, 16.

Eastern points from western points. Wool, 675.
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 Elkhart, Ind., to Chicago, Ill. Furniture, 331.
 El Paso, Tex., from California. Chili pepper, 233.
 Englewood, Ill., from Danville, Ill. Paving brick, 366.
 Espanola, N. Mex., to Arizona and California. Apples, 174.
 Everett, Wash., to Canada. Lumber, 376.
 Faribault, Minn., to Fort Worth, Tex. Furniture, 40.
 Florida to Helena, Mont. Grapefruit, 424.
 Fort Montgomery, N. Y., to New Jersey and Pennsylvania. Iron ore, 303.
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 Fort Smith, Ark., from various territories. Knitting-factory products, 634.
 Fort Worth, Tex., to Crawford, Nebr. Fruit and vegetables, 259.
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 Galax, Va., to Pacific coast. Furniture, 379.
 Galesburg, Ill., to Galva, Ill. Potatoes, 30.
 Galva, Ill., from Green Bay, Wis., and Galesburg, Ill. Potatoes, 30.
 Galveston, Tex. Demurrage; export shipments, 216.
 Garden City, N. Y. Coal, 399.
 Glasgow, Ky., from New Orleans, La. Bananas, 103.
 Goahen, Ind., to Chicago, Ill. Furniture, 331.
 Green Bay, Wis., to Galva, Ill. Potatoes, 30.
 Greenville, Ill., to St. Louis, Mo. Machinery, 214.
 Gulf ports to Little Rock, Ark. Nitrate of soda and potash, 645.
 Guthrie, Okla., to Canadian, Tex. Sleeping-cars service, 120.
 Hammond, Ind., from Oklahoma. Cottonseed and inedible tallow, 237.
 Hankinson, N. D., to Drake, N. D. Grain, 46.
 Harrisburg, Pa., from Ringwood and Wharton, N. J., and Fort Montgomery, N. Y.
 Iron ore, 303.
 Hatfield, Ark., to New Orleans, La. Lumber, 78.
 Helena, Mont., from Florida. Grapefruit, 424.
 Helena, Mont., from Lincoln, Nebr. Rocking chairs, 371.
 High Point, N. C., to Pacific coast. Furniture, 379.
 High Springs, Fla., to Helena, Mont. Grapefruit, 424.
 Hoboken, N. J., from Taylor, Pa. Anthracite coal, 14.
 Hotchkiss, Colo., from Burlington, Iowa. Furniture, 1.
 Huachuca, Ariz., to California. Horses and mules, 255.
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 Idaho to Crawford, Nebr. Fruits and vegetables, 259.
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 Indiana coal mines. Mine ratings, 286.
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 Iowa to Chicago, Ill. Hay, 680.
 Iowa from Kansas gas belt. Brick, 669.
 Iowa from Minneapolis and St. Paul. Class rates, 268.
 Iowa to North Dakota. Corn, oats, and feed, 46.
 Iowa to Superior and Milwaukee, Wis., and Duluth, Minn. Grain, 342.
 Jackson, Miss. Transit privilege, 42.

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 Johnson City, Tenn. Transit privilege, 71.
 Joliet, Ill., from Coffeyville, Kan. Petroleum, 374.
 Joliet, Ill., to Dallas, Tex. Automobile wind-shield frames, 212.
 Junction City, Ky., from Louisville, Ky. Class rates, 277.
 Kanawha district, Ky., to central freight asso. territory. Coal, 241.
 Kanawha district, W. Va., to Niles, Mich. Bituminous coal, 364.
 Kansas, Missouri, and Nebraska. Class and commodity rates, 401.
 Kansas to Texas. Grain, 625.
 Kansas gas belt to Missouri and Iowa. Brick, 669.
 Kansas salt fields to Oklahoma. Salt, 610.
 Kansas City, Kan., to Texas. Grain, 625.
 Kansas City, Mo., from Texas, New Mexico, and Colorado. Live stock, 63.
 Keene's, N. Y., to Wharton, N. J. Iron ore, 303.
 Kenova coal fields, W. Va., to Rarden, Ohio. Coal, 613.
 Kentucky coal mines. Mine ratings, 286.
 Kentucky from Dalton, Ga. Lumber, 22.
 Knoxville, Tenn., to Copperhill, Tenn. Dynamite, 19.
 Knoxville, Tenn., from Mobile, Ala. Logs, 44.
 Knoxville, Tenn., from New York. Logs, 653.
 La Crosse, Wis., to Chicago, Ill. Flaxseed, 337.
 Lake Charles, La., from St. Louis, Mo. Vegetables, 695.
 Lake Erie ports to Pittsburgh, Pa. Coal, 303.
 Lebanon, Ky., from Louisville, Ky. Class rates, 277.
 Lehigh district from New York and New Jersey. Iron ore, 303.
 Lincoln, Nebr., to Helena, Mont. Rocking chairs, 371.
 Little Rock, Ark., from New Orleans, La. Nitrate of soda and potash, 645.
 Little Rock, Ark., to Ravana, Ark. Fertilizer, 266.
 Little Rock, Ark., from various territories. Knitting-factory products, 634.
 Lockland, Ohio, from Augusta, Ga. Cotton-factory sweepings, 434.
 Lodi, Cal., to eastern points. Refrigeration charges, 35.
 Los Angeles, Cal., to El Paso, Tex. Chili pepper, 233.
 Los Angeles, Cal., from Huachuca, Ariz. Horses and mules, 255.
 Los Angeles, Cal., from Richmond, Va. Chickens and furniture, 107.
 Louisiana to Acme, Tex. Lumber and crossties, 437.
 Louisiana to Chicago, Ill., and Cleveland, Ohio. Cottonseed, 702.
 Louisiana to Crawford, Nebr. Fruit and vegetables, 259.
 Louisiana to New Orleans, La. Lumber; export shipments, 78.
 Louisville, Ky., to Lebanon and Junction City, Ky. Class rates, 277.
 Louisville, Ky., from New Albany, Ind. Lumber, 116.
 Louisville, Ky., to Norfolk and Newport News, Va. Grain; export shipments, 352.
 Louisville, Ky., from Oklahoma. Cottonseed and inedible tallow, 237.
 Louisville, Ky., to Oklahoma City, Okla., and Chattanooga, Tenn. Interior house trimmings, 656.
 Lynden, Wash., to Canada. Lumber, 376.
 Lynn, Colo., to Alma, Nebr. Coal, 97.
 Maine to New York, New Jersey, Pennsylvania, and other New England states. Potatoes, 159.
 Mandan, N. Dak., from Missouri River. Grain, 46.
 Marianna, Ark., from Springfield, Mo. Mules, 8.
 Maywood, Ill., from Whitford, La. Lumber, 171.
 Memphis, Tenn. Fourth section relief, 50.
 Memphis, Tenn., to Arkansas. Knitting-factory products, 634.

Mexico from Eagle Pass, Tex. Hay, 5.
 Michigan from Cumberland Valley district. Lumber, 193.
 Michigan, Upper peninsula, to New York, N. Y., and Detroit, Mich. Copper, 357.
 Midway, Ky., to Norfolk or Newport News, Va. Grain for export, 352.
 Milford Jct., Ind., to Chicago, Ill. Furniture, 331.
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 Milwaukee, Wis. Milling-in-transit, 90.
 Milwaukee, Wis., to Arkansas. Knitting-factory products, 634.
 Milwaukee, Wis., from South and North Dakota, Iowa, and Minnesota. Grain, 342.
 Milwaukee, Wis., from Wayne, Mich. Sleighs, 368.
 Minden "K," Nebr., from South Canon, Colo. Coal, 97.
 Minneapolis, Minn. Milling-in-transit, 90.
 Minneapolis, Minn., to Chicago, Ill. Flaxseed, 337.
 Minneapolis, Minn., to Des Moines, Iowa. Beer-bottle carriers, 249.
 Minneapolis, Minn., to Iowa. Class rates, 268.
 Minnesota to Chicago, Ill. Hay, 680.
 Minnesota from Minneapolis and St. Paul, Minn. Class rates, 268.
 Minnesota to North Dakota. Corn, oats, and feed, 46.
 Minnesota to Superior and Milwaukee, Wis., and Duluth, Minn. Grain, 342.
 Mississippi River from South Dakota, Nebraska, and Colorado. Potatoes, 247.
 Mississippi Valley territories. Uniformity of grain operation, 130.
 Missouri from Kansas gas belt. Brick, 669.
 Missouri, Kansas, and Nebraska. Class and commodity rates, 401.
 Missouri River from Chicago, Ill. Fourth section relief, 93.
 Missouri River from east and west. Hops, 16.
 Missouri River points. Elevation, 326.
 Missouri River and various points west from Council Bluffs, Iowa. Lumber, 27.
 Mobile, Ala., from Athertonville, Ky. Whisky in glass, 397.
 Mobile, Ala., to Knoxville, Tenn. Logs, 44.
 Monahan, Wash., to Canada. Lumber, 376.
 Morganton, N. C., from Appalachia and Dante fields of Va. Coal, 112.
 Mount Vernon, Ill., to Cincinnati, Ohio. Sunflower seed, 48.
 Murfreesboro, Tenn., from Dalton, Ga. Lumber, 22.
 Nappanee, Ind., to Chicago, Ill. Furniture, 331.
 Nashville, Tenn., from Dalton, Ga. Lumber, 22.
 Nebraska. Elevator allowance, 326.
 Nebraska, Missouri, and Kansas. Class and commodity rates, 401.
 Nebraska to Mississippi River and points east. Potatoes, 247.
 New Albany, Ind., from Arkansas and the south. Lumber, 116.
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 New England states from Suffolk, Va. Berry and fruit baskets, 68.
 New England territory to Pacific coast. Furniture, 379.
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 Lumber, 272.
 New Jersey from Maine. Potatoes, 159.
 New Jersey from Suffolk, Va. Berry and fruit baskets, 68.
 New Mexico to Kansas City, Mo. Live stock, 63.
 New Orleans, La. Demurrage on exports, 216.
 New Orleans, La., from Athertonville, Ky. Whisky in glass, 397.
 New Orleans, La., to Glasgow, Ky. Bananas, 103.
 New Orleans, La., to Little Rock, Ark. Nitrate of soda and potash, 645.
 New Orleans, La., from Louisiana and Arkansas. Export lumber, 78.

New Orleans, La., from Refugio, Tex. Calves, 661.
 New York from Aroostook county, Me. Potatoes, 159.
 New York from Bedford, N. Y., via Weehawken, N. J. Sizing, 429.
 New York to Pennsylvania. Iron ore, 303.
 New York from Suffolk, Va. Berry and fruit baskets, 68.
 New York, N. Y., from Detroit, Mich. Tobacco, 698.
 New York, N. Y., to Knoxville, Tenn. Spanish cedar logs, 663.
 New York, N. Y., from South Pittsburg, Tenn. Cedar-pencil material, 203.
 New York, N. Y., from Upper peninsula of Michigan. Copper, 357.
 New York Harbor, N. Y., to Vermont. Through routes and joint rates, 388.
 New York Lighterage to Elizabethport, N. J. Ground manganese ore, 663.
 New York Lighterage station, N. J., from Taylor, Pa. Anthracite coal, 14.
 Newport, Tenn. Lumber; transit privilege, 71.
 Newport News, Va., from Midway and Louisville, Ky. Grain for export, 352.
 Niles, Mich., to Chicago, Ill. Furniture, 331.
 Niles, Mich., from West Virginia. Bituminous coal, 364.
 Norfolk, Va., from Midway and Louisville, Ky. Grain for export, 352.
 North Dakota to Chicago, Ill. Hay, 680.
 North Dakota from Iowa, Minnesota, and South Dakota. Corn, oats, and feed, 46.
 North Dakota to Superior and Milwaukee, Wis., and Duluth, Minn. Grain, 342.
 North Philadelphia, Pa. Elevation, 618.
 Oakes, N. Dak., to Redfield, S. Dak. Grain, 342.
 Oelwein, Iowa, from Whitford, La. Lumber, 171.
 Official classification territory from Philadelphia, Pa. Soap; rehearing, 154.
 Ohio from Buffalo group. Petroleum oil, 349.
 Ohio from Cumberland Valley district. Lumber, 193.
 Ohio River crossings from the south. Lumber, 50, 116.
 Oklahoma from Kansas salt fields. Salt, 610.
 Oklahoma from St. Louis, Mo. Bar iron, 416.
 Oklahoma to Texas, Kentucky, Ohio, and Indiana. Cottonseed and inedible tal-
 low, 237.
 Oklahoma City, Okla., from Louisville, Ky. Interior house trimmings, 656.
 Old Fort, N. C., from Appalachia and Dante fields of Va. Coal, 112.
 Olds Ferry, Idaho, from Baker City, Oreg. Class rates, 281.
 Omaha, Nebr., from Burlington, Iowa. Brick, 669.
 Oregon to Crawford, Nebr. Fruits and vegetables, 259.
 Oregon from eastern points. Trunk-covering materials, 685.
 Oregon to Missouri River and east. Hops, 16.
 Pacific coast from New England, Virginia, and Carolina territories. Furniture, 379.
 Paducah, Ky., to New Orleans, La. Empty oil barrels, 372.
 Page, W. Va., to Missouri. Coke, 183.
 Panama, Mo., to Chattanooga, Tenn. Hay, 32.
 Parryville, Pa., from Ringwood, N. J., and Fort Montgomery, N. Y. Iron ore, 303.
 Pennsylvania from Cumberland Valley district. Lumber, 193.
 Pennsylvania from New England states. Potatoes, 159.
 Pennsylvania from New York. Iron ore, 303.
 Pennsylvania from Suffolk, Va. Berry and fruit baskets, 68.
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 Phillipsburg, N. J., from Sterlington, N. Y. Iron ore, 303.
 Pine Bluff, Ark., from Cherryvale, Kans. Brick, 101.

Pittsburgh-Buffalo territory from Cumberland Valley division. L
 Pittsburgh, Pa., from Lake Erie ports. Coal, 303.
 Plattsmouth, Nebr., from Chicago, Ill. Fourth section relief, 93.
 Portland, Oreg., to California. Box shooks, 123.
 Portland, Oreg., from Chicago, Ill. Liquid tree spray, 156.
 Pottstown, Pa., from Ringwood and Wharton, N. J., and Fort Mc
 Iron ore, 303.
 Prescott, Ariz. Demurrage, 174.
 Prosser, Wash., to Shoshone, Idaho. Emigrant movables, 275.
 Rarden, Ohio, from Thacker and Kenova coal fields, W. Va. Co
 Ravana, Ark., from Little Rock, Ark. Fertilizer, 266.
 Ravenswood, Ill., from Chicago, Ill. Coal, 403.
 Redfield, S. D., from Oakes, N. D. Grain, 342.
 Redwine, Ky., to central freight asso. territory. Coal, 241.
 Refugio, Tex., to New Orleans, La., and St. Louis, Mo. Calves,
 Richmond, Va., to Los Angeles, Cal. Chickens and furniture, 1
 Ringwood, N. J., to Pennsylvania. Iron ore, 303.
 Rose Hill station, Ill., from Chicago, Ill. Coal, 403.
 Ruskin, Nebr., from Council Bluffs, Iowa. Lumber, 27.
 Rust, Ark., to New Orleans, La. Export lumber, 78.
 St. Louis, Mo., from Bartlesville, Okla. Scrap iron, 672.
 St. Louis, Mo., to Beaumont, Tex., and Lake Charles, La. Veg
 St. Louis, Mo., from Greenville, Ill. Machinery, 214.
 St. Louis, Mo., from Minnesota. Flaxseed, 337.
 St. Louis, Mo., to Oklahoma. Bar iron, 416.
 St. Louis, Mo., from Refugio, Tex. Calves, 661.
 St. Louis, Mo., from southeast. Empty barrels, 641.
 St. Louis, Mo., to Texas. Fire brick, 141.
 St. Louis, Mo., to Texas. Furniture, 299.
 St. Louis, Mo., from West Virginia. Coke, 183.
 St. Louis gateway from Chicago territory en route to Arkansas
 factory products, 634.
 St. Paul, Minn., to Chicago, Ill. Flaxseed, 337.
 St. Paul, Minn., to Iowa. Class rates, 268.
 San Diego, Cal., to Boston, Mass. Passenger and corpse, 207.
 San Francisco, Cal., from Chattanooga, Tenn. Sink-and-launch
 San Francisco, Cal., from Huachuca, Ariz. Horses and mules.
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 Seattle, Wash., to Alaska. Through routes and joint rates, 196
 Shoshone, Idaho, from Prosser, Wash. Emigrant movables, 27
 Sioux City, Iowa, from Chicago, Ill. Fourth section relief, 93
 Skagway, Alaska, from Seattle, Wash. Through routes and jo
 South to Ohio River crossings. Lumber, 50, 116.
 South Bend, Ind., from West Virginia. Bituminous coal, 364
 South Brooklyn, N. Y. Dray charges, 11.
 South Canon, Colo., to Minden "K" and Alma, Nebr. Coal,
 South Dakota to Chicago, Ill. Hay, 680.
 South Dakota to Mississippi River and points east. Potatoes
 South Dakota to North Dakota. Corn, oats, and feed, 46.
 South Dakota to Superior and Milwaukee, Wis., and Duluth,
 South Pittsburg, Tenn., to New York, N. Y. Cedar-pencil n
 South Sioux City, Nebr., from Chicago, Ill. Fourth section
 Southeast to Arkansas. Knitting-factory products, 634.

Springfield, Mo., to Marianna, Ark. Mules, 8.
 Stables, La., to Ashdown, Ark. Lumber, 611.
 Stanley, Ky., to Akron, Ohio. Dried grain, 700.
 Sterlington, N. Y., to New Jersey and Pennsylvania. Iron ore, 303.
 Stevenson, Ala., from Dalton, Ga. Lumber, 22.
 Suffolk, Va., to the New England States. Berry and fruit baskets, 68.
 Superior, Wis., from South and North Dakota, Iowa, and Minnesota. Grain, 342.
 Taylor, Pa., to Hoboken, N. J. Anthracite coal, 14.
 Tennessee from Dalton, Ga. Lumber, 22.
 Terre Haute, Ind., to Illinois. Drain tile, 688.
 Texas ports. Demurrage on exports, 216.
 Texas to Chicago, Ill., and Cleveland, Ohio. Cottonseed, 702.
 Texas to Crawford, Nebr. Fruits and vegetables, 259.
 Texas from Kansas. Grain, 625.
 Texas to Kansas City, Mo. Live stock, 63.
 Texas from Oklahoma. Tallow and cottonseed, 237.
 Texas from St. Louis, Mo. Fire brick, 141.
 Texas from St. Louis, Mo. Furniture, 299.
 Thacker coal fields, W. Va., to Rarden, Ohio. Coal, 613.
 Toledo, Ohio. Reconsigning, 392.
 Toronto, Canada, from Vandalia, Ill. Roofing paper, 432.
 Trotters Point, Miss. Fourth section relief, 50.
 Tullahoma, Tenn., from Dalton, Ga. Lumber, 22.
 Tulsa, Okla., from St. Louis, Mo. Bar iron, 416.
 Tustin, Cal., to El Paso, Tex. Chili pepper, 233.
 Tustin, Mich., to Cincinnati, Ohio. Barrel headings, 38.
 University Place, Nebr., from Council Bluffs, Iowa. Lumber, 27.
 Upper peninsula of Michigan to New York, N. Y. Copper, 357.
 Utah to Crawford, Nebr. Fruits and vegetables, 259.
 Vale, Oreg., from Baker City, Oreg. Class rates, 281.
 Vandalia, Ill., to Toronto, Canada. Roofing paper, 432.
 Vermont from New York Harbor, N. Y. Through routes and joint rates, 333.
 Versailles, Mo., to Texas. Fire brick, 141.
 Virginia territory to Pacific coast. Furniture, 379.
 Wallula, Wash., to Shoshone, Idaho. Emigrant movables, 275.
 Walsenburg district, Colo., to Alma, Nebr. Coal, 97.
 Wartrace, Tenn., from Dalton, Ga. Lumber, 22.
 Washington to Canada. Lumber, 376.
 Washington from eastern points. Trunk-covering materials, 685.
 Washington to Missouri River and east. Hops, 16.
 Washington, D. C. Pick-up and delivery service, 411.
 Wayne, Mich., to Milwaukee, Wis. Sleighs, 368.
 Weehawken, N. J., from Bedford, N. Y. Sizing, 429.
 Weiser, Idaho, from Baker City, Oreg. Class rates, 281.
 West Virginia to Niles, Mich. Bituminous coal, 364.
 West Virginia to Rarden, Ohio. Coal, 613.
 Western classification territory. Motor cycles, 134.
 Western points to eastern points. Mohair, 679.
 Western points from eastern points. Trunk-covering materials, 685.
 Western points to eastern points. Wool, 675.
 Wharton, N. J., from Fort Montgomery, Keene's, and Sterlington, N. Y. Iron ore, 303.

Whitford, La., to Oelwein, Iowa. Lumber, 171.
Wichita, Kans., to Texas points. Grain, 625.
Winona, Minn., to Chicago, Ill. Flaxseed, 337.
Wisconsin to Chicago, Ill. Hay, 680.
Wisconsin from Wayne, Mich. Sleighs, 368.
Woodbridge, Cal. Icing, 35.
Yukon territory from Seattle, Wash. Through routes and joint rates, 136.

LONG AND SHORT HAUL.

IN GENERAL.

It was the intent of Congress to put a stop to the form of discrimination prohibited in section 4 in so far as it could properly be done. In re Lumber Rates, 50 (60).

APPLICATION FOR RELIEF.

A general or blanket application for relief from section 4 held sufficient, there being nothing in the section of the act prescribing the form, contents, or breadth of the application to be filed thereunder. Southern Furniture Mfrs. Assn. v. S. Ry. Co. 379 (381).

WHAT RATES ARE COMPARED.

A proportional rate is not to be compared with a local rate to show a violation of section 4. In re Lumber Rates, 50 (60).

ELEMENTS CONSIDERED.

Reasonableness of Long-haul Rate.

Where rates were per se just and reasonable for the greater service involved in the long haul, the Commission denied the carriers' application for relief from the operation of section 4. In re Lumber Rates, 50 (59).

Market Competition.

While market competition should be considered, and while the Commission does not hold that market competition alone may not in some instance justify a departure from the rule of section 4, held that, in this case, relief should not be granted on that ground. In re Lumber Rates, 50 (59).

Railroad Competition.

Where the rate from the intermediate point was reasonable, held that railroad competition with direct lines justified a circuitous line in deviating from the rule of section 4. McCullough v. L. & N. R. R. Co. 48 (49); In re Southern Ry. Co. 407 (410); In re Lumber Rates, 50 (51); Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (94).

A road having a line which exceeded the short line by 15 per cent held to be a circuitous line within the meaning of section 4. Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (95).

A line that was 103 miles longer than the direct line held to be a circuitous line within the meaning of section 4. Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (94).

Application for relief on ground of railroad competition denied. Lebanon Commercial Club v. L. & N. R. R. Co. 277 (279).

Water Competition.

Water competition justifies a deviation from section 4, and cities located upon the Ohio River should be accorded the benefit of their location; but not in this case. In re Lumber Rates, 50 (59).

Routes in Either Direction.

The existence of routes in both directions held to justify a deviation from section 4 to the extent of charging a higher rate from a point located on the center of a certain road than from localities located east or west thereof, when traffic passes through such point. In re Lumber Rates, 50 (56).

Revenue.

That an adherence to section 4 will entail but slight loss of revenue affords no reason for denying an application for relief. In re Lumber Rates, 50 (60).

APPLICATIONS NOT PASSED UPON.

The fourth-section question arising in these cases was not passed upon. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (196); *Dewey Bros. Co. v. L. H. & St. L. Ry. Co.* 700 (701); *Eagle Pencil Co. v. N. C. & St. L. Ry.* 203 (206); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (26).

LOW-GRADE ARTICLE.

Distillers' dried grain. *Greenbaum Co. v. C. & O. Ry. Co.* 352 (355).

LOW RATES.

Lumber should take a low rate. *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (24).

Existing rates not found too low and advances condemned. In re Advances on Potatoes, 247 (248).

MANNER OF SHIPMENT.

Considered in determining classification rating. In re Advances on Flaxseed, 337 (341).

MARKET COMPETITION.

Defined. In re Lumber Rates, 50 (59).

Market competition should be considered and while the Commission does not hold that market competition alone may not in some instances justify a departure from section 4, in this case an application for relief should not be granted on that ground. In re Lumber Rates, 50 (59).

Redwine mines are entitled to the benefit of the market competition occasioned by the coal from different mines seeking the same markets. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (246).

While market competition should be considered in determining a question of undue prejudice under section 3, it is no defense to a charge of undue prejudice to urge that market competition compels the low rate at the favored point when similar conditions exist at the point discriminated against. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (246).

Market competition considered in determining the reasonableness of rates. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); *Taylor v. N. & W. Ry. Co.* 613 (617).

MARKETS.

A carrier may not, by refusing reasonable through routes, equipment, or facilities, dictate markets which shippers shall enjoy. In re Mine Ratings, 236 (295).

Oklahoma shippers of cottonseed products can not expect to enter far into the Texas markets. In re Advances on Cottonseed Products, 237 (239).

A tariff limiting the territory into which grain can be shipped from Milwaukee, when treated in transit at that point, permitted to become effective. In re Milling-in-transit Regulations, 90.

So far as rates unduly favor the millers along one line, farmers as well as millers, located on other lines, are deprived of markets, and free competition is thus restricted. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (632).

of a carrier can not defeat or qualify this right. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

MARKING PACKAGES.

Inferior, insecure tags should be prohibited; no justification has been shown for rule which provides requirements of metal eyelets at an additional expense of 15 cents per 100. *Western Classification case*, 442 (484).

Rule providing durable marking of less-than-carload packages with identifying symbol to be shown in the shipping order and bill of lading approved. *Western Classification case*, 442 (484).

MEASURE OF RATE.

IN GENERAL.

There is no exact standard by which the reasonableness of a rate can be measured. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (677).

ADJUSTMENT OF RATES.

The relative adjustment of rates considered in determining the reasonableness of rates. In re Advances in Class Rates, 268 (271); In re Advances on Furniture, 299 (302); In re Advances in Class and Commodity Rates, 401 (402); *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (309); In re Advances on Oil, 349 (351); In re Advances on Knitting-factory Products, 634 (639, 640); In re Advances on Manganese Ore, 663 (667); *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (655); *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645; In re Advances on Hay, 680 (684); *Taylor v. N. & W. Ry. Co.* 613 (614); *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633); In re Lumber Rates, 50 (58); *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (152); In re Advances on Live Stock, 63 (64); In re Advances on Hops, 16 (18); *Superior Commercial Club v. G. N. Ry. Co.* 342 (343).

That the reduction in a given rate will entail a reduction of other rates is no sufficient reason for refusing to reduce an unreasonable rate. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674).

Disturbance of adjustment, considered. *City of Crawford v. C. & N. W. Ry. Co.* 259 (263); *Davidson Bros. v. L. & N. R. R. Co.* 103 (105).

ADVANTAGES AND DISADVANTAGES.

The natural and geographical advantages and disadvantages of a locality are to be considered in determining the reasonableness of its rates. In re Mine Ratings, 236 (298); *Chamber of Commerce of Beaumont v. T. & N. O. R. R. Co.* 695 (697); In re Advances on Furniture, 331 (336); *Greenbaum Co. v. C. & O. Ry. Co.* 352 (355); In re Wool, Hides, and Pelts, 185 (191); *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (632).

BACK HAUL.

An additional charge may properly be made for a back haul. *Spiegle v. S. Ry. Co.* 71 (72).

Back haul referred to. *Moore v. D. & R. G. B. R. Co.* 1 (4); In re Milling-in-transit Regulations, 90.

BRIDGES.

Expense of constructing and maintaining bridges is to be considered in determining the reasonableness of rate. *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (96).

BULK.

The space occupied by an article is to be considered in determining its classification rating. *Western Classification case*, 442 (473).

The character of an article is to be considered in determining its classification rating. *Western Classification case, 442 (472).*

CHARGING WHAT TRAFFIC WILL BEAR.

Theory of charging what traffic will bear, discussed. In re *Advances on Drain Tile and Sewer Pipe, 688 (693); National Wool Growers' Asso. v. O. S. L. R. R. Co. 675 (678); Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co. 357 (363).*

Limitations to rule that a carrier should not charge more than an article can bear, discussed. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co. 672 (673).*

CIRCUMSTANCES AND CONDITIONS.

The circumstances and conditions must be considered. In re *Advances on Live Stock, 63 (65); National Wool Growers' Asso. v. O. S. L. R. R. Co. 675 (677); Dewey Bros. Co. v. L. H. & St. L. Ry. Co. 700 (701); Bartlesville Salvage Co. v. M. K. & T. Ry. Co. 672 (673); Western Classification case, 442.*

CLASSIFICATION.

The question of rates should be kept separate from the question of classification. *Western Classification case, 442 (453).*

CLIMATIC CONDITIONS.

Climatic conditions considered in determining reasonableness of rates. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co. 357 (363).*

COMMERCIAL AND ECONOMIC CONDITIONS.

The act which the Commission administers was not passed to reenforce the provisions of the tariff law in matters of foreign competition. In re *Advances on Manganese Ore, 663 (665).*

The needs of shippers can not be made the basis of reasonable rates. *Superior Commercial Club v. G. N. Ry. Co. 342 (348).*

Commercial conditions may be considered in connection with other factors. *Lindsay Bros. v. P. M. R. R. Co. 368 (369).*

Alleged necessities of a particular description of traffic, discussed. In re *Advances on Flaxseed, 337 (341).*

Failure to sell in common markets, due to quality of coal, cost of shipper's operations, or comparative aggressiveness of respective selling forces, discussed. *North Fork Cannel Coal Co. v. A. A. R. R. Co. 241 (243).*

Commercial conditions discussed. *National Wool Growers' Asso. v. O. S. L. R. R. Co. 675 (678).*

COMPARISON OF RATES.

Rate on one article compared with rate on another article in determining reasonableness of rate. In re *advances on Trunk-covering Material, 685 (686); In re Advances on Drain Tile and Sewer Pipe, 688 (691); Multnomah Lumber & Box Co. v. S. P. Co. 123 (129); Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co. 141 (151); In re Advances on Hops, 16 (17); Bernheim & Co. v. O. R. R. & N. Co. 156; In re Lumber Rates, 50 (54); Farrar Lumber Co. v. N. C. & St. L. Ry. 22 (25); Griffing v. C. & N. W. Ry. Co. 134 (135); Appalachia Lumber Co. v. L. & N. R. R. Co. 193 (194); National Lumber Exporters' Asso. v. K. C. S. Ry. Co. 78 (86) *Bartlesville Salvage Co. v. M. K. & T. Ry. Co. 672 (673); In re Advances on Flaxseed, 337 (339); Holcker-Elberg Mfg. Co. v. C. R. I. & P. Ry. Co. 212; Railroad Commissioners of Montana v. C. B. & Q. R. R. Co. 371; Coffins Box & Lumber Co. v. C. & N. W. Ry. Co. 249 (250); Marian Coal Co. v. D. L. & W. R. R. Co. 14; North Fork Cannel Coal Co. v. A. A. R. R. Co. 241 (244); Dupont de Nemours Powder Co. v. C. R. R. Co. of New Jersey, 19; Struck Co. v. L. & N. R. R. Co. 656 (658); Cahill Iron**

Works v. N. C. & St. L. Ry. 252; Bagley & Co. v. P. M. R. R. Co. 698; City of Crawford v. C. & N. W. Ry. Co. 259 (263); Superior Commercial Club v. G. N. Ry. Co. 342 (343); In re Wool, Hides, and Pelts, 185; Western Classification case, 442.

COMPETITION

In General.

Competition is to be considered in determining the proper classification of an article. Western Classification case, 442 (473).

The absence of competition is to be considered in determining the relative reasonableness of a rate. In re Advances in Class and Commodity Rates, 401 (402).

Competition is not to be considered in determining a question of discrimination under section 2. In re Advances on Manganese Ore, 663 (668).

The existence of competition at a favored point is no defense to a charge of undue prejudice in violation of section 3 when similar competitive conditions exist at the place prejudiced. Southern Furniture Mfrs. Asso. v. S. Ry. Co. 379 (386); Mfrs. & Merchants' Asso. v. A. & A. R. R. Co. 116 (119).

Cross-country Competition.

Cross-country competition considered in determining relative reasonableness of rates. Superior Commercial Club v. G. N. Ry. Co. 342 (345); Lebanon Commercial Club v. L. & N. R. R. Co. 277 (279).

Market Competition.

Market competition considered in determining reasonableness of a rate. Whar-ton Steel Co. v. D. L. & W. R. R. Co. 303 (308); Taylor v. N. & W. Ry. Co. 613 (617).

May be considered in determining a violation of section 3, but it is no defense to a charge of undue prejudice that competition compels the low rate at the favored point when similar conditions obtain at the point discriminated against. North Fork Cannel Coal Co. v. A. A. R. R. Co. 241 (246).

Should be considered and may in some instances justify a departure from section 4; relief on that ground is denied in this case. In re Lumber Rates, 50 (59).

Railroad Competition.

Considered in determining reasonableness of rates. City of Crawford v. C. & N. W. Ry. Co. 259 (264); McCullough v. L. & N. R. R. Co. 48 (49); Farrar Lumber Co. v. N. C. & St. L. Ry. 22 (24).

Competition of circuitous line with short line, considered in determining relative reasonableness of a rate. Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (95).

Fact that there are more competing lines in one section than in another, considered in determining the relative reasonableness of rates. Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J. 653 (654).

Considered in determining a question of undue prejudice under section 3. Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co. 645 (648); Gund & Co. v. C. B. & Q. R. R. Co. 326 (329).

Circuitous line held to be justified in deviating from rule of section 4 because of competition with short line. McCullough v. L. & N. R. R. Co. 48 (49); In re Lumber Rates, 50 (51); Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (94).

In this case, held to justify a deviation from section 4. Lebanon Commercial Club v. L. & N. R. R. Co. 277 (279).

MEASURE OF RATE—Continued.

COMPETITION—Continued.

Wagon Competition.

Joint rates put into effect between certain cities by carriers in order to compete with traffic handled by wagons. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (282).

Water Competition.

Considered in determining reasonableness of rate. *Taylor v. N. & W. Ry. Co.* 613 (617); *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); *In re Advances on Furniture*, 331 (332).

Found to have caused the establishment of certain rates by carriers. *In re Advances on Flaxseed*, 337 (338); *In re Advances on Knitting-Factory Products*, 684 (689).

Considered in determining a question of undue prejudice under section 3. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

Held to justify a deviation from the rule of section 4. *In re Lumber Rates*, 60 (61).

CONDITION OF ARTICLE.

While ordinarily the same rate is applied to all lumber without reference to its condition, rough lumber may properly be given a lower rate than dressed lumber. *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (25).

COST OF OPERATION.

The cost of operation is an element to be considered in determining the reasonableness of a rate. *In re Advances on Live Stock*, 63 (64); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (244); *Taylor v. N. & W. Ry. Co.* 613 (615); *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (128); *Union Tanning Co. v. S. Ry. Co.* 112 (114).

COST OF SERVICE.

Cost of service considered in determining reasonableness of a rate. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (283); *Western Classification case*, 442 (608); *Spiegle v. S. Ry. Co.* 71 (75); *In re Classification of Empty Barrels*, 641 (642).

Cost of service discussed in reference to reasonableness of a rate. *In re Advances on Hops*, 16 (17); *In re Advances on Hay*, 680 (682).

Rate so low as not to carry its share of the burden of producing revenue. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672.

CURVES IN ROAD.

Fact that operating conditions are severe because of curves in road, considered in determining reasonableness of rate. *Taylor v. N. & W. Ry. Co.* 613 (615).

DENSITY OF TRAFFIC.

Considered in determining reasonableness of rate. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150); *Taylor v. N. & W. Ry. Co.* 613 (615); *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (654); *In re Advances on Live Stock*, 63 (64); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (244).

Density of traffic discussed. *Dewey Bros. v. L. H. & St. L. Ry. Co.* 700 (701).

Trainload movements discussed. *Taylor v. N. & W. Ry. Co.* 613 (617).

DIRECTION OF MOVEMENT.

The fact that a rate in one direction is lower than the rate in the opposite direction is not of itself a justification for advancing the former rate. *In re Advances on Potatoes*, 247.

Reasonableness of rates. *Norris v. St. L. & S. F. R. R. Co.* 416 (423); *In re Lumber Rates*, 50 (54); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

As an element affecting rates, discussed. *Superior Commercial Club v. G. N. Ry. Co.* 342 (348); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (24); *In re Advances on Hops*, 16 (17); *Davidson Bros. v. L. & N. R. R. Co.* 103 (104).

Necessarily ignored somewhat under the grouping system. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (309).

For long-distance movement the rate should not, and ordinarily does not, increase for the last miles of that movement by the amount of the local rate for that distance. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (194).

On long hauls—as a haul for 600 or 1,000 miles—the reason for allowing a higher charge for a two-line than for a one-line haul largely disappears. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633).

On a line haul a difference in mileage of 1.41 miles is of no consequence, but where the delivering road performs only a terminal delivery service, such carrier is entitled to receive a reasonable charge. *Gilmore & Co. v. C. & N. W. Ry. Co.* 403 (405).

A difference of 44 miles in distance held not to justify a difference of 55 cents per ton in rates on coal. *Union Tanning Co. v. S. Ry. Co.* 112 (115).

Average haul considered in determining reasonableness of rates. *Taylor v. N. & W. Ry. Co.* 613 (617); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

Distance rates recommended by Commission. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (309); *In re Advances on Live Stock*, 63 (65); *Superior Commercial Club v. G. N. Ry. Co.* 342 (348).

Permission given carriers to change from distance to group basis of constructing rates. *In re Advances on Cottonseed Products*, 237.

Principle of making rates with relation to short-line distance. *Superior Commercial Club v. G. N. Ry. Co.* 342 (345).

Where grouping is reasonably done the shorter distances to the markets may be determined by the average distances from the points reached by two or more systems within a given group. *Superior Commercial Club v. G. N. Ry. Co.* 342 (345).

DIVISION OF THROUGH RATES.

The Commission has many times expressed the view that the division received by a carrier as its share of a joint rate is not conclusive evidence of the unreasonableness of the joint rate. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

Where divisions are determined by highly competitive conditions, they throw no light on the reasonableness of joint rates. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

EASE OF HANDLING.

The ease with which an article can be handled, considered in determining the proper classification thereof. *Western classification case*, 442 (473).

EMPTY-CAR MOVEMENT.

Empty-car movement considered in determining the reasonableness of a rate. *Taylor v. N. & W. Ry. Co.* 613 (616); *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245); *In re Advances in Demurrage Charges*, 314 (318).

ESTOPPEL.

That prior lower rates were in effect for a long time and that complainants invested money on account of such rates, does not prove that present higher rates are excessive. *In re Advances on Furniture*, 331 (336).

Where an advanced rate is reasonable, the Commission can not direct the restoration of a prior lower rate solely on the ground that the carrier is estopped to advance such rate. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (313).

The fact that the carriers have heretofore advanced a rate between certain points can not be held to constitute an estoppel and prevent the carriers from making a further advance, provided the advanced rate is reasonable. *In re Advances on Hay*, 680 (684).

The fact that for many years the defendant carriers have undertaken to furnish such service, considered in determining the obligation of defendants to furnish protection against cold during the winter months. *In re Advances on Potatoes*, 159 (163).

The fact that a rate has been in force for several years without protest on the part of shippers does not justify its maintenance if such rate is unreasonable. *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19 (20).

FALSE BILLING.

The possibility or probability of false billing, considered in determining the proper classification of an article. *Western Classification case*, 442 (474).

GATEWAYS.

Fact that a city is a Mississippi River gateway considered in determining the reasonableness of its rates. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

GRADES.

Severity of operating conditions, caused by adverse grades, considered in determining reasonableness of a rate. *Taylor v. N. & W. Ry. Co.* 613 (615); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245); *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (128); *Union Tanning Co. v. S. Ry. Co.* 112 (115).

INDUSTRIAL RATES.

The contention that existing rates are necessary to develop and protect the milling interests on a particular line is not a justification for these rates. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (632).

JUDGMENT.

The final answer as to whether a given rate is reasonable or not, is a matter of judgment. The traffic official exercises his judgment in the first instance, and the Commission, when it revises that rate, substitutes its judgment for that of the traffic official. *National Wool Growers' Asso. v. O. S. L. R. R. Co.* 675 (677).

JUNCTION POINT.

That a locality is a junction point, considered in determining the reasonableness of a rate. *Superior Commercial Club v. G. N. Ry. Co.* 342 (346).

LINE HAUL.

That a haul between given points involves a two or three line movement, considered in determining reasonableness of rates. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308). *See also* *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633); *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (283).

Two-line haul, discussed. *Lebanon Commercial Club v. L. & N. R. R. Co.* 277 (279); *Standard Vitriified Brick Co. v. C. B. & Q. R. R. Co.* 669 (670).

LOADING.

Whether the goods could be loaded in a car so as to get a full carload, considered in determining the proper classification. *Western Classification case*, 442 (472).

Loading quality of goods, discussed. *In re Advances on Hops*, 16 (17); *In re Advances on Hay*, 680 (683).

The manner of shipping a particular article is to be considered in determining the proper classification. In re Advances on Flaxseed, 337 (341).

OPERATING CONDITIONS.

The severity of operating conditions, caused by grades and curves, considered in determining the reasonableness of a rate. See *Taylor v. N. & W. Ry. Co.* 613 (615); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245); *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (128); *Union Tanning Co. v. S. Ry. Co.* 112 (115).

PACKING.

The manner in which an article is packed, considered in determining the reasonableness of a rate or classification. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678); *Western Classification case*, 442 (557, 513, 514, 512, 500).

POINTS OFF LINE.

Each carrier that participates in joint rates is responsible for discrimination. *Mrs. & Merchants Assn. v. A. & A. R. R. Co.* 116 (118); *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (227).

A carrier that participates in the carrying trade of a point discriminated against and a point favored, is responsible for any undue prejudice. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (386). See also *Greenbaum Co. v. C. & O. Ry. Co.* 352 (355).

Point located on subsidiary line of same system. *Lewis v. C. B. & Q. R. R. Co.* 97 (98).

Points off line, discussed. *City of Crawford v. C. & N. W. Ry. Co.* 259 (261).

POPULATION.

Population of respective localities considered in determining reasonableness of rates. *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (654); *Anacostia Citizens Assn. v. B. & O. R. R. Co.* 411 (415).

PUBLIC INTEREST.

Public interest in safe packing. *Western Classification case*, 442 (495).

Public interest in use of public waters. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388 (391).

Public interest in issuance of through export bills of lading. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (222).

Public interest in developing all possible traffic along a carrier's line. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (632).

QUANTITY OF FREIGHT.

Application of higher rate on a shipment of 3,200 pounds than on a shipment of 4,000 pounds, held unreasonable. *Wright & Co. v. V. R. R. Co.* 214 (215).

REDUCTION IN RATES.

The mere reduction of a rate by a carrier is not proof that the prior higher rate was unreasonable. *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (250); *Lewis v. C. B. & Q. R. R. Co.* 97 (99); *Bernheim & Co. v. O. R. R. & N. Co.* 156 (158); *Moore v. D. & R. G. R. R. Co.* 1 (4).

Reduction in rate discussed in connection with reasonableness of prior higher rate. *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438); *United States v. S. P. Co.* 255 (257).

RESTORATION OF RATE OR PRIVILEGE.

That a transit privilege was in effect both before and after a shipment moved, in and of itself furnishes no basis for an award of reparation on such shipment. *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43).

The question of revenue should be kept separate from the question of classification. *Western Classification case*, 442 (453).

Differences in earnings of carriers in different territories considered in mining the propriety of rate comparisons. *Evens & Howard Fire Brick St. L. I. M. & S. Ry. Co.* 141 (150).

A violation of section 3 can not be predicated upon a difference in rate on noncompeting articles, unless the rate on the favored article is so low as to be unremunerative and fail to carry its share of the burden of producing revenue. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672.

The relative lack of financial prosperity of carriers, considered in determining the reasonableness of a rate. *Michigan Copper & Brass Co. v. D. S. S. & T. Ry. Co.* 357 (363).

The adequacy of the revenue for the service performed by the carriers is taken into consideration in determining the reasonableness of a particular rate. *Lindsay Bros. v. P. M. R. R. Co.* 368 (369).

Remunerativeness of rate, considered. *In re Advances on Flaxseed*, 337 (340); *In re Advances on Hay*, 680 (684).

Car-mile Earnings.

Car-mile earnings considered in determining the reasonableness of a rate. *Classification of Empty Barrels*, 641 (644); *In re Advances on Furs*, 299 (302); *In re Advances on Hay*, 680 (683); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (151); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (244); *In re Advances on Hops*, 16 (17).

Ton-per-mile Earnings.

The principle that carriers are entitled to a somewhat higher revenue per ton-mile on short than on long hauls, is admitted by the complainant. *Western Steel Co. v. D. L. & W. R. R. Co.* 303 (305).

Ton-per-mile earnings considered in determining the reasonableness of a rate. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150); *Hartman & Elberg Mfg. Co. v. C. R. I. & P. Ry. Co.* 212 (213); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (673); *Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co.* 669 (671); *Norris v. St. L. & S. F. R. R. Co.* 416 (423); *In re Advances on Flaxseed*, 337 (340); *Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co.* 8 (9); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22; *In re Advances on Potatoes*, 247 (248); *Crawford v. C. & N. W. Ry. Co.* 259 (263); *In re Advances on Hay*, 680 (684); *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648); *Taylor v. N. C. & St. L. Ry. Co.* 613 (615); *Switzer Lumber Co. v. K. C. S. Ry. Co.* 611 (612); *Fort Scott Co. v. I. C. R. R. Co.* 432 (433).

Ton-mile earnings discussed. *In re Advances on Drain Tile and Sewer Pipe*, 688 (694).

Profit.

Carriers, voluntarily furnishing storage in cars, are entitled to reasonable compensation beyond the cost of service. *In re Demurrage Charges*, 314 (324).

A carrier, furnishing a transit service, is entitled to a profit over and above the cost of service. *Spiegle v. S. Ry. Co.* 71 (76).

Net earnings on heater cars in this case held not to be a just return upon the value of those cars. *In re Advances on Potatoes*, 159 (165).

MEASURE OF RATE—Continued.

PROFIT—Continued.

If the carriers were to equip themselves with cars, motive power, tracks, and terminals so as to meet at any moment the maximum demand for transportation, the shipping public would be obliged to pay interest upon that investment, and for the maintenance of these facilities. In re Mine Ratings, 286 (293).

RISK.

Liability to loss or damage considered in determining the reasonableness of a rate. In re Advances on Hops, 16 (17); Western Classification case, 442 (473); In re Advances on Flaxseed, 337 (340); Norris v. St. L. & S. F. R. R. Co. 416 (423); Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J. 19 (20).

Risk discussed. In re Advances on Drain Tile and Sewer Pipe. 688 (693); Bagley & Co. v. P. M. R. R. Co. 698 (699).

ROUTES.

That there is between the same points of origin and destination a lower rate via another route, is not of itself proof that a rate via a given route is unreasonable. Ball Lumber Co. v. T. & P. Ry. Co. 437 (438).

Rate via another route, discussed. Wichita Board of Trade v. A. T. & S. F. Ry. Co. 625 (633).

Routes in either direction considered in determining a case arising under section 4. In re Lumber Rates, 50 (56).

TERMINAL PROPERTIES.

The demands made upon the terminal properties of the defendant carriers may properly be considered in determining the reasonableness of a rate. Western Classification case, 442 (608).

TONNAGE. See also VOLUME OF TRAFFIC; DENSITY OF TRAFFIC.

Tonnage considered in determining the reasonableness of a rate. Western Classification case, 442 (473); In re Advances on Flaxseed, 337 (341).

TRANSPORTATION CONDITIONS.

Difference in transportation conditions considered in determining the reasonableness of a rate. Western Classification case, 442 (474); Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co. 141 (150).

USE.

The Commission has condemned the maintenance of dual rates on a commodity dependent upon the use to which the article is put. Arkansas Fertiliser Co. v. St. L. I. M. & S. Ry. Co. 645 (647).

Classification rating may not be predicated upon use; but use may be considered in determining the value of an article. Western Classification case, 442 (445).

Propriety of basing a rate upon use, referred to. St. Louis Blast Furnace Co. v. V. Ry. Co. 183.

UTILIZATION OF EQUIPMENT.

The utilization of equipment may properly be considered in determining a proper relation between carload and l. c. l. rates. Western Classification case, 442 (608).

VALUE OF ARTICLE.

May properly be considered in determining the reasonableness of a rate. In re Advances on Flaxseed, 337 (340); In re Advances on Drain Tile and Sewer Pipe, 688 (693); Bernheim & Co. v. O. R. R. & N. Co. 156 (158); In re Advances on Trunk-covering Material, 685 (686); Western Classification case, 442 (473, 499); North Fork Cannel Coal Co. v. A. A. R. R. Co. 241 (243); Cahill Iron Works v. N. C. & St. L. Ry. 252 (254); Farrar Lumber Co. v. N. C. & St. L. Ry. 22 (25); In re Advances on Hops, 16 (17).

Value of commodity, discussed. Bagley & Co. v. P. M. R. R. Co. 698 (699); Appalachia Lumber Co. v. L. & N. R. R. Co. 193 (194).

MEASURE OF RATE—Continued.

VALUE OF SERVICE.

Value of service considered in determining the reasonableness of a rate. *Lindsay Bros. v. P. M. R. R. Co.* 368 (369); *Spiegle v. S. Ry. Co.* 71 (74); *Western Classification case*, 442 (473).

VOLUME OF TRAFFIC.

Considered in determining the reasonableness of a rate. In re *Advances on Flaxseed*, 337 (341); *Western Classification case*, 442 (473); *Anacostia Citizens Asso. v. B. & O. R. R. Co.* 411 (413); In re *Advances on Potatoes*, 159 (163); In re *Advances on Flaxseed*, 337 (341); In re *Advances on Potatoes*, 247 (248); *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (363).

WEIGHT.

Weight of an article considered in determining the reasonableness of a rate. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *Western Classification case*, 442 (473).

MINIMUM CARLOAD WEIGHT. *See also* WEIGHT.

Ordinarily should be established with reference to the loading capacity of the car. If carriers desire to protect themselves from unduly low charges per car, they should do so by regulating the rate and not by prescribing arbitrary minimum weights which can only be loaded in cars of unusual size. *Riverside Mills v. G. R. R.* 434.

Generally speaking, carload ratings should be established whenever carload quantities are offered for shipment and the public interest requires it. The relative merits of a system of any quantity ratings, as compared with a system of carload and less-than-carload ratings, left for future consideration. *Western Classification case*, 442 (443).

For all articles or commodities which by their shape, or lack of definite shape, are capable of being loaded into all classes of lengths, a rule providing for an increase in the minimum weight for every linear foot seems to fit exactly. *Western Classification case*, 442 (480).

Carriers should take into consideration both the physical minimum and the commercial minimum to govern carload shipments and provide themselves with cars of corresponding sizes. *Western Classification case*, 442 (443).

Rule governing sliding scale of minimum weights, approved. *Western Classification case*, 442 (481).

The principle of increasing the minimum weight with an increase in the size of the car must be recognized as correct. *Western Classification case*, 442 (480).

The loading capacity of the car increases directly with both its length and its cubical contents. *Western Classification case*, 442 (480).

It is a general practice of the carriers, confirmed by the Commission, that if a carrier, for its own convenience, furnishes a car of a larger size than the one ordered, or two smaller cars, the minimum applicable to the size of the car ordered shall govern. This provision should be made universal. *Western Classification case*, 442 (480).

Where a large car is ordered and two smaller ones are furnished in lieu thereof, the carrier should protect shippers on the basis of the minimum weight applicable to the car ordered. *Riverside Mills v. G. R. R.* 434 (435).

Complaint against the minimum upon the ground that the nature of the shipments is such that they can not be loaded to the weights prescribed, held that the minimum weight is not shown to be unreasonable. *Lindsay Bros. v. P. M. R. R. Co.* 368.

Where the responsibility for failure to furnish cars of sufficient size to contain the minimum weight upon which charges were assessed rests upon a Mexican road, no jurisdiction to grant relief. *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5.

deck cars to establish the fact that the shipper might be able to obtain a reasonable minimum by ordering double-deck cars, when there are no facilities for loading double-deck cars. *Kibbe v. St. L. B. & M. Ry. Co.* 661.

Twenty thousand pounds on barrels discriminatory to the extent that it exceeded 12,000 pounds. *Paducah Cooperage Co. v. I. C. R. R. Co.* 372.

No commodity is loaded always to its exact minimum. The actual loading usually very considerably exceeds the minimum prescribed. The same thing is to a degree true of baled wool. *In re Wool, Hides, and Pelts*, 185 (188).

Charges based on a combination rate with varying minima found unreasonable and joint rate and unvarying minima prescribed for the future. *Thompson v. A. T. & S. F. Ry. Co.* 174.

Various light and bulky articles which can not be loaded heavily are given the lowest minimum contained in the particular carriers' tariffs. This practice is said to be known as "the principle of the least minimum," and to apply universally. *Lindsay Bros. v. P. M. R. R. Co.* 368 (369).

A reduction of the rate and an increase of the minimum ordered by the Commission. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674).

Varying minima held applicable to through shipment. *Moore v. D. & R. G. R. R. Co.* 1 (2).

MINIMUM CHARGES. *See also* REASONABLE CHARGES.

Rule that the minimum charge for a single shipment of less-than-carload freight will be 100 pounds of the class or commodity to which the article belongs, approved. *Western Classification case*, 442 (488).

Minimum charge, discussed. *In re Advances on Flaxseed*, 337 (338).

MISROUTING.

The Commission has frequently held that a shipper is bound by his routing instructions. *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438).

Where the same rate applies via either of two routes, a carrier is not guilty of misrouting because it forwards the goods by the shortest route, notwithstanding the fact that a reforwarding movement might have been secured at a lower rate had the shipment moved by the other route, there being no intermediate routing instructions. *Platten Produce Co. v. C. & N. W. Ry. Co.* 30.

Reconsignment privilege lost as a result of carrier's misrouting; damages awarded. *Conifer Lumber Co. v. L. & N. R. R. Co.* 272.

Where an initial line, by applying another carrier's rate could have forwarded a shipment in accordance with the shipper's instructions, held that the initial line was guilty of misrouting in failing to follow such instructions; and that damages, including demurrage charges, should be awarded for the loss of reconsignment privileges. Reparation awarded. *Beekman Lumber Co. v. L. Ry. & N. Co.* 171 (172).

MIXED SHIPMENTS.

Liberal provisions should be made for mixtures. *Western Classification case*, 442 (443).

By requiring a substantial minimum to be loaded of each commodity in the mixture it would become impossible to defeat the minimum weight requirements of the others by including in the shipment a nominal quantity of one. Such provision should be inserted in rule 21-B. *Western Classification case*, 442 (445).

The restriction of the mixture of machinery and machines to articles "necessary for the initial equipment" is unjustly discriminatory. *Western Classification case*, 442 (445).

MIXED SHIPMENTS—Continued.

Mixture of furniture. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379.

Mixed carload of sinks and combination sink and laundry tubs. *Cahill Iron Works v. N. C. & St. L. Ry.* 252.

Emigrant movables. *Ream v. S. P. Co.* 107.

NARROW-GAUGE ROUTE.

Moore v. D. & R. G. R. R. Co. 1 (4); *Thompson v. A. T. & S. F. Ry. Co.* 174 (178).

NEGLIGENCE.

A caretaker of chickens, negligently permitted by carrier to start on journey free of charge, held to be entitled to reparation. *Ream v. S. P. Co.* 107 (111).

"NESTED."

Rule defining "nested" approved by Commission. *Western Classification case*, 442 (510).

"ONE LOADING POINT."

Ambiguity of this phrase. *Western Classification case*, 442 (478).

OPERATING CONDITIONS.

The severity of operating conditions, caused by grades and curves, considered in determining the reasonableness of a rate. *See Taylor v. N. & W. Ry. Co.* 613 (615); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245); *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (128); *Union Tanning Co. v. S. Ry. Co.* 112 (115).

ORDER NOTIFY.

Alleged agreement under which consignor was to be notified of arrival of consignment at destination, discussed. *Alexander v. S. Ry. Co.* 32.

ORDERS OF COMMISSION.

Order of Commission effective Aug. 15, 1912, relating to policing of transit privileges, held applicable to shipments that began to move prior to that date. *Transit case*, 130 (134).

An apprehension by a complainant that the carriers, while technically complying, will defeat an order of the Commission, is no reason for modifying such order. *Mfrs. & Merchants' Assn. v. A. & A. R. R. Co.* 116 (117, 118).

No order entered; carriers given opportunity to comply with decision. *In re Southern Ry. Co.* 407; *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (310); *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (633).

OVERCHARGES.

Charges in excess of legal rate collected. *Struck Co. v. L. & N. R. R. Co.* 656 (658); *Arabol Mfg. Co. v. S. B. Ry. Co.* 429 (430); *Davidson Bros. v. L. & N. R. R. Co.* 103 (106); *Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co.* 376 (377); *In re Advances on Potatoes*, 159 (170); *Leach v. N. P. Ry. Co.* 275; *Lindsay & Co. v. G. N. Ry. Co.* 424 (425); *National Lumber Exporters Assn. v. K. C. S. Ry. Co.* 78 (87); *Seaboard Refining Co. v. A. G. S. R. R. Co.* 792; *Wilson Bros. v. D. L. & W. R. R. Co.* 11 (13).

OVERFLOW SHIPMENTS. See FOLLOW-LOT SHIPMENTS.**PACKING.**

From a classification standpoint, the security of a package may with propriety be considered in fixing the rating. *Western Classification case*, 442 (443).

The rating on articles in glass may properly be higher than the rating on articles in bulk. *Western Classification case*, 442 (588).

A higher rating on an article in bundles than in boxes or crates appears on its face to be justified. *Western Classification case*, 442 (573).

baled wool. *National Wool Growers' Assn. v. O. S. L. R. R. Co.* 675 (678).

It is admitted that no reason exists for a difference in the minimum upon baking powder dependent upon the form of the package. *Western Classification case*, 442 (561).

A jacketed metal can is not as safe as a barrel containing metal cans for the shipment of oil. *Western Classification case*, 442 (545).

The Commission fails to see the necessity of a crate which shall be large enough to include every part of the runner of the sleigh. *Western Classification case*, 442 (542).

Bundles not burlaped are a more insecure package, involving greater risk in transportation, than bales or burlaped bundles. *Western Classification case*, 442 (532).

Where wide variation in the value of the same commodities when shipped in fiber or metal cans or containers when packed in barrels or boxes, the rating on such double packages should not be higher than the rating on the same commodity when shipped in bulk in barrels. *Western Classification case*, 442 (499).

The propriety of the container or crating should be determined at the point of origin. *Western Classification case*, 442 (475).

Nested shipments. Rule relating to nested shipments disapproved. *Western Classification case*, 442 (486).

Crated. Rule defining "crated" not passed upon. *Western Classification case*, 442 (485).

Wrapped. Meaning of "wrapped" discussed. *Western Classification case*, 442 (575).

PAPER RATES.

The Commission should not ordinarily require a maintenance of rates on a given article if in point of fact no traffic was likely to move under them. In re *Advances on Potatoes*, 247 (248).

PARKING CARS.

In re *Advances on Potatoes*, 159 (169).

PARTIES. See also Damages.

INTERVENERS.

Interveners in this case held entitled to affirmative relief, notwithstanding objection of defendants. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (152).

DEFENDANTS.

The Commission has jurisdiction here to deal only with those carriers which are parties to these proceedings. *Griffing v. C. & N. W. Ry. Co.* 134 (135).

No order entered against a carrier that did not appear at the hearing. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (285).

Where a broad question is intended to be raised it should be in some comprehensive proceeding to which the railroads responsible for the situation can be made parties. In re *Advances in Class Rates*, 268 (271).

The authority of the Commission to issue orders in a proceeding is limited to those defendants that are then before it. *Fels & Co. v. P. R. R. Co.* 154 (155).

Waiver of fact that a certain railroad company was not named as a party to the complaint and appearance entered, by attorney for such road. *Kamm & Co. v. P. Co.* 198 (199).

PARTS.

If all the parts constituting a completed article are offered as one shipment, under one bill of lading, the freight charge should be calculated upon a rating for the completed article. This does not prevent a shipper from billing separately each constituent part at its respective rating. *Western Classification case*, 442 (487).

PASSENGERS. *See* TICKETS; SLEEPING-CAR COMPANIES; TRANSFER COMPANIES.
PASSES.

Caretakers: Held, a tariff providing for a pass for caretakers of live stock did not include a caretaker of chickens. *Ream v. S. P. Co.* 107 (110).

Caretakers: Western Classification should either provide for the transportation of a necessary caretaker of perishable freight or require carriers to take care of stoves and replenish fuel. *Western Classification case*, 442 (445).

PAYMENT. *See also* COLLECTION OF CHARGES; DAMAGES.

Rule that no cars would be received from connecting lines for switching unless all freight charges were prepaid, not condemned. *Hollingshead & Blei Co. v. P. Co.* 38 (39).

PENALTY RATES.

Mentioned. *In re Milling-in-transit Regulations*, 90.

PLEADING, PRACTICE, AND PROCEDURE.

Fourth section application held sufficient for the purpose for which it was filed. *Southern Furniture Mfrs. Asso. v. S. Ry. Co.* 379 (381).

Amendment of petition to attack reduced rate on basis of which complainant sought reparation in his original petition. *Taylor v. N. & W. Ry. Co.* 613 (614).

The Commission observes the substance and not the form of pleading. The complaint in this case is not in form a motion for rehearing. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 266 (267).

It is the practice of the Commission to definitely name each corporation to which its orders are intended to apply regardless of the intercorporate relations which may exist between the parties to an order. *Fels & Co. v. P. R. R. Co.* 154 (155).

POINTS OFF LINE.

Each carrier that participates in joint rates both to a point discriminated against and to a point preferred is responsible for the discrimination, notwithstanding the fact that its rails do not extend to the latter point. *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 116 (118); *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (227).

A carrier that participates in the carrying trade of a point discriminated against and a point favored is responsible for any undue prejudice. *Southern Furniture Mfrs. Asso. v. S. Ry. Co.* 379 (386). *See also* *Greenbaum Co. v. C. & O. Ry. Co.* 352 (355).

Point located on subsidiary line of same system. *Lewis v. C. B. & Q. R. R. Co.* 97 (98).

Points off line discussed. *City of Crawford v. C. & N. W. Ry. Co.* 259 (261).

POLICY.

The Commission can not indulge in speculation as to the motives which actuate carriers in fixing an adjustment of rates. *Norris v. St. L. & S. F. R. R. Co.* 416 (423).

Whether a complaining lighterage company is wise in seeking the establishment of published joint through rates with respondent is a question which it must decide for itself. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 338 (391).

POPULATION.

Population of respective sections of a city discussed in connection with charge of undue discrimination. *Anacostia Citizens Asso. v. B. & O. R. R. Co.* 411 (415).

Fact that an area is thickly or thinly populated considered in determining relative reasonableness of a rate. *Philadelphia Veneer & Lumber Co. v. C. R. R. Co. of N. J.* 653 (654).

POSTING TARIFFS. *See also* FILING TARIFFS; PUBLISHING RATES.

Special rates or fares for transportation of property or troops of the Federal Government need not be posted. *United States v. S. P. Co.* 255 (258).

POSTING TARIFFS—Continued.

Failure to post a tariff which contained no change in rates, and misleading quotation by defendant carrier's local agent, afford no basis for reparation. *Faribault Furniture Co. v. C. G. W. R. R. Co.* 40.

PRECEDENTS.

Because of a difference in conditions, the present case is not controlled by a decision in another case relied upon by petitioner. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625.

Although the present case involves traffic originating on the line of a party not a defendant in a former case, the delivering carrier is the same in each case and the reasons which necessitated a reduction of rates in the former case are likewise sufficient to require the application of a like remedy to this case. *Lewis v. C. B. & Q. R. R. Co.* 97 (99).

Supreme Court decisions in the Peavey and Updike cases followed. *Gund & Co. v. C. B. & Q. R. R. Co.* 326.

PREFERENCES AND PREJUDICES.**IN GENERAL.**

Section 3 of the act prohibits undue or unreasonable preference or advantage to any person, locality, or particular kind of traffic. *In re Advances in Demurrage Charges*, 314 (323).

ARTICLES.*Competitive Relationship.*

Where the rate on spelter has no bearing upon the scrap-iron business, no discrimination against scrap iron can result from a lower rate on spelter, unless the rate on spelter is so low as to be unremunerative. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672.

LOCALITIES.*What Constitutes Prejudice.*

Discrimination against a distributing point can not be predicated merely upon the fact that the combination of inbound and outbound rates on such distributing point exceeds the combination on a competitive distributing point. *In re Advances on Knitting-factory Products*, 634 (639).

It would be unjust discrimination against a junction-point mine not to give recognition to its natural advantages. *In re Mine Ratings*, 286 (298).

Where complainants, as shippers of lumber from points on the Cumberland Valley division of the L. & N. road, enjoy in common with all other shippers a lower rate to a more distant point, and no special damage to them nor to the intermediate point is shown, no violation of section 3 is established. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (196).

If discrimination exists on lumber rates from Washington to Canada, the discrimination must be due to rates applicable only in Canadian territory, over which rates the Commission has no jurisdiction. *Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co.* 376 (378).

A complaint alleging undue prejudice against a city in that it is deprived of joint rates can not be sustained when the joint rates have been canceled at the points alleged to have been unduly preferred. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (283.)

The charge of discrimination in this case is predicated upon the allegation that the rates assailed are relatively unreasonable rather than that the rates to other points are unduly preferential. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (305).

PREFERENCES AND PREJUDICES—Continued.**LOCALITIES—Continued.***What Constitutes Prejudice—Continued.*

Rates upon Connellsville and West Virginia cannel coal can not be used to predicate a finding of unjust discrimination in rates on cannel coal against Redwine and in favor of Kanawha bituminous fields. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (242).

Circumstances and Conditions.

That competition exists at a favored locality is no defense to a charge of undue prejudice when similar competition exists at the point unduly prejudiced. *Southern Furniture Mfrs. Asso. v. S. Ry. Co.* 379 (386); *Mfrs. & Merchants' Asso. v. A. & A. R. R. Co.* 116 (119).

The circumstances and conditions connected with the service rendered must be taken into consideration in determining what is undue or unreasonable preference or advantage under section 3. *In re Advances in Demurrage Charges*, 314 (323).

Minor difference in conditions might justify a difference in demurrage rules or in free time at New Orleans as compared with Galveston, but minor differences do not justify the utter failure to impose any demurrage charges on export cotton at the former while imposing such charges at the latter. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (227).

The fact that rates on cannel coal from Redwine, Ky., to central freight association territory were made the same as the rates from Cannel City, Ky., a station on the line of none of the defendants, there being no showing that the Cannel City rates are reasonable, explains the existence but does not necessarily justify the continuance of the present Redwine rates. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241.

Where a carrier applies combination of both classification ratings on traffic, the mere fact that the general rule, applying southern classification rating on the entire haul into official territory, is in force from other points in southern territory, does not of itself constitute undue prejudice. *Virginia Mfg. Co. v. A. C. L. R. R. Co.* 68 (70).

Market Competition.

It is no defense to a charge of undue prejudice to urge that market competition compels the lower rate at a favored point where similar competition exists at the point discriminated against. *North Fork Cannel Co. v. A. A. R. R. Co.* 241 (246).

The existence of actual and potential water competition at Memphis creates a substantial dissimilarity of circumstances as compared with Little Rock on traffic from New Orleans, notwithstanding the fact that the latter locality is upon the Arkansas River, boats having recently ceased running to Little Rock for lack of cargoes. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

Railroad Competition.

A discrimination between localities may be harmful and at the same time not constitute an undue discrimination because of railroad competition. *Gund & Co. v. C. B. & Q. R. R. Co.* 326 (329).

That one city is a Mississippi River gateway, together with other facts, held to constitute a dissimilarity of circumstances as compared with a city subjected to competitive conditions. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

Distance.

Where the delivering carrier performs only a terminal service, such road is entitled to receive additional compensation for a haul of 1.41 miles. *Gilmore & Co. v. C. & N. W. Ry. Co.* 403 (406).

Commercial and Economic Conditions.

The greater number of business houses in northwest Washington in the vicinity of Fourteenth street and Park road as compared with the number in Anacostia, D. C., is not sufficient to create any substantial dissimilarity of circumstances. *Anacostia Citizens Assn. v. B. & O. R. R. Co.* 411 (412).

Where rival mine operators have the same freight rates to an equally accessible territory, the failure of one of them to sell in the near-by markets must be due either to a difference in the quality of the coal, the cost of operating, or the aggressiveness of the respective selling forces. These facts do not constitute undue prejudice. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (243).

Points Off Line.

Each carrier that participates in joint rates is responsible for the discrimination, notwithstanding the fact that its rails do not extend to the point preferred. *Mfrs. & Merchants' Assn. v. A. & A. R. R. Co.* 116 (118); *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (227).

A carrier that participates in the carrying trade of a locality discriminated against and a locality favored is responsible for any undue prejudice. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (386). See also *Greenbaum Co. v. C. & O. Ry. Co.* 352 (355).

Point located on subsidiary line of same system. *Lewis v. C. B. & Q. R. R. Co.* 97 (98).

Points off line, discussed. *City of Crawford v. C. & N. W. Ry. Co.* 259 (261).

Volume of Traffic.

Difference in volume of traffic at two localities, discussed in determining a question of undue prejudice. *Anacostia Citizens Assn. v. B. & O. R. R. Co.* 411 (413).

Disturbance of Adjustment.

To the extent that jobbers in a given city have been enabled to extend their trade by reason of preference in rates, such preference should be removed rather than continued. In re *Advances on Knitting-factory Products*, 634 (640).

If removal of unjust discrimination between other markets somewhat injuriously affects Minneapolis, that fact would be no excuse for permitting the unjust discrimination to continue. *Superior Commercial Club v. G. N. Ry. Co.* 342 (348).

PERSONS.

It is no defense to a charge of undue discrimination between manufacturers to urge that they are not engaged in the manufacture of the same or similar articles and do not compete in the markets. Giving a lower rate to one than to another, when both are so situated as to entitle them to equal rates, is an unreasonable and undue discrimination, whether the output of the two manufacturers is the same or not. *Union Tanning Co. v. S. Ry. Co.* 112 (113).

Two manufacturers located at the same point and both dependent upon the same mines and the same carriers for their coal supply are ordinarily entitled to equal rates irrespective of the character, use, or disposition of their products. A lower rate to one than to the other can not be justified merely upon the absence of competition in the sale of their products. *Union Tanning Co. v. S. Ry. Co.* 112 (114).

To permit one shipper to grind ore and ship it from the grinding point at the balance of the import rate while denying this privilege to other shippers, constitutes undue prejudice. In re *Advances on Manganese Ore*, 663 (669).

PREFERENCES AND PREJUDICES—Continued.

PERSONS—Continued.

Defendant carrier's refusal to pay an elevation allowance at Black Rock, N. Y., for which it had no tariff authority, not found to have been discriminatory or otherwise in violation of the act. *Ryley v. W. R. R. Co.* 210.

Allegation of unjust discrimination from denial of certain diversion and stoppage-in-transit privileges, not sustained. *Thompson v. A. T. & S. F. Ry. Co.* 174.

An excessive difference between the carload and less-than-carload rates on the same commodity results in an undue preference to the carload shipper of that commodity. *Western Classification case*, 442 (465).

TRAFFIC.

A carrier can not lawfully discriminate against interstate in favor of intrastate traffic. *In re Advances on Hay*, 680 (684).

PROPORTIONAL RATES.

The propriety of maintaining between two points a proportional rate applicable to traffic for beyond which is lower than the local rate between such points, not passed upon. *In re Lumber Rates*, 50 (60).

The proportional rate here involved can be used only upon the surrender to the outbound carrier of an expense bill showing the payment of the inbound rate. *In re Advances on Flaxseed*, 337 (338).

A proportional rate is not to be compared with a local rate to show a violation of section 4. *In re Lumber Rates*, 50 (60).

Proportional rates discussed. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (383). *In re Advances on Flaxseed*, 337; *Superior Commercial Club v. G. N. Ry. Co.* 342 (348); *Lindsay & Co. v. G. N. Ry. Co.* 424 (427); *Norris v. St. L. & S. F. R. R. Co.* 416 (423).

PUBLIC INTEREST.

Requires the issuance of through export bills of lading on cotton moving through Galveston. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (222).

Use of public waters. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388 (391).

In safe packing. *Western Classification case*, 442 (486).

In not requiring carriers to load or unload exceptional shipments of large, heavy, and bulky l. c. l. shipments. *Western Classification case*, 442 (491).

Development of all possible traffic along a carrier's line. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (632).

In granting allowance for dunnage. *Western Classification case*, 442 (495).

PUBLISHING RATES. *See also POSTING TARIFFS.*

Where the through rates must be made of separately established rates because there is no joint tariff, the law requires carriers to publish such separately established rates. *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5 (7).

QUOTATION OF RATE. *See LEGAL RATES AND CHARGES.*

RAIL-AND-WATER RATES.

Rail-and-water rate on cedar-pencil material from South Pittsburg, Tenn., to New York, N. Y., not found unreasonable or discriminatory. *Eagle Pencil Co. v. N. C. & St. L. Ry.* 203.

Rail-and-water rates, discussed. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (360); *Philadelphia Veneer & Lumber Co. v. O. R. R. Co. of N. J.* 653; *In re Advances on Flaxseed*, 337 (339).

v. C. & N. W. Ry. Co. 259 (264); McCullough v. L. & N. R. R. Co. 48 (49); Farrar Lumber Co. v. N. C. & St. L. Ry. 22 (24); Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (95).

Fact that there are more competing lines in one section than in another considered. Philadelphia Veneer & Lumber Co. v. C. R. R. of N. J. 653 (654).

Competition by a circuitous line with a short line considered. Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (95).

Railroad competition considered in determining a question of undue prejudice under section 3. Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co. 645 (648); Gund & Co. v. C. B. & Q. R. R. Co. 326.

Circuitous line held to be justified in deviating from rule of section 4 because of competition with short line. McCullough v. L. & N. R. R. Co. 48 (49); In re Lumber Rates, 50 (51); Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co. 93 (94).

In this case, held not to justify a deviation from the rule of section 4. Lebanon Commercial Club v. L. & N. R. R. Co. 277 (279).

RAILROAD CONSIGNEE.

Damages awarded shipper for misrouting of lumber consigned to carrier. Beekman Lumber Co. v. L. Ry. & N. Co. 171 (172).

RATES.

A carrier may make a rate lower than it can be required to make. Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co. 141 (149).

The question of rates should be kept separate from the question of classification. Western Classification case, 442 (453).

REASONABLE CHARGES. *See also* DEMURRAGE; HEATING; MINIMUM CARLOAD WEIGHT; RECONSIGNMENT; ELEVATION; REFRIGERATION; TRANSIT PRIVILEGES; STORAGE; SWITCHING.

Section 1 provides that charges for the transportation of passengers or property shall be just and reasonable. National Wool Growers' Assn. v. O. S. L. R. R. Co. 675 (676). *See also* In re Advances in Demurrage Charges, 314 (323).

REASONABLE RATES.

IN GENERAL.

The law requires carriers to charge reasonable rates. In re Advances on Hay, 680 (684).

BURDEN OF PROOF.

The burden is on complainant to show that a rate, reasonable when established, has become unreasonable. National Wool Growers' Assn. v. O. S. L. R. R. Co. 675 (678).

The burden is on the carrier to justify an advanced rate. In re Advances on Hops, 16; Bristol Door & Lumber Co. v. N. & W. Ry. Co. 87 (89); In re Milling-in-transit Regulations, 90 (92); In re Advances on Corn, 46 (47); In re Advances on Knitting-factory Products, 634 (639).

EVIDENCE.

Admission by carrier of unreasonableness of rate. Leach v. N. P. Ry. Co. 275 (276).

RECEIPT OF GOODS.

Carrier probably obliged to receive export cotton and issue its local bill of lading to Galveston. Galveston Commercial Assn. v. A. T. & S. F. Ry. Co. 216 (224).

to divert a shipment as ordered. *Alexander v. S. Ry. Co.* 32 (34).

Reconsignment privilege lost as a result of misrouting; damages awarded. *C Lumber Co. v. L. & N. R. R. Co.* 272.

Within reasonable limits, reconsignment privileges are necessary and proper. *Advances in Demurrage Charges*, 314 (316).

Instance cited of a car of coal that was reconsigned 15 times. *In re Advances in Demurrage Charges*, 314 (316).

The privilege of reconsignment is one that imposes additional labor, cost, an ability upon the carriers, and therefore is a service for which they may make a reasonable charge. *Detroit Reconsigning case*, 392 (394).

Proposed charge of \$2 per car, for reconsigning carload shipments received at D to points within the switching district, found to be unreasonable unless the consignees are advised of the arrival of the cars at Toledo on the tracks of the carriers on delivery at Detroit, so that the consignees may have an opportunity to give reconsigning orders before the cars reach the latter point. *Detroit Reconsigning case*, 392.

Damages, including demurrage charges, awarded where complainant was deprived of a reconsignment privilege through misrouting of carrier. *Beekman Lumber Co. v. L. Ry. & N. Co.* 171 (173).

When a car moves under heat, \$4 is a proper reconsignment charge during the period that the car is held for reconsignment. *In re Advances on Potatoes*, 159 (163).

When no heater service is involved, \$2 is assumed, in this case, to be a proper reconsignment charge. *In re Advances on Potatoes*, 159 (170).

REDUCTION IN RATES. *See also ADVANCE IN RATES; DAMAGES; RESTORATION OF RATE OR PRIVILEGE.*

The voluntary reduction of a rate does not of itself prove that the higher rate is unreasonable. *Coffins Box & Lumber Co. v. C. & N. W. Ry. Co.* 249 (250). *See Bernheim & Co. v. O. R. R. & N. Co.* 156 (158); *Moore v. D. & R. G. R. R. Co.* 157 (158). Considered in determining reasonableness of prior higher rate. *United States v. S. P. Co.* 255 (257).

Reparation awarded on basis of reduced rate voluntarily established by carrier, the carrier admitting the unreasonableness of the higher rate. *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438).

REFRIGERATION. *See also HEATING.*

That carriers in many cases rest under the obligation to protect shipments against heat by producing artificial cold, is universally admitted. *In re Advances on Potatoes*, 159 (163).

Western Classification rule 31, requiring publication by all carriers of refrigerator car service or the service of protecting against heat, permitted to go into effect. *Western Classification case*, 442 (498).

Refrigeration charges from Lodi, Cal., to eastern destinations, found to have been unduly prejudicial to the extent that they exceeded charges contemporaneous effect from Acampo and Woodbridge, Cal. Reparation to be awarded. *Mason v. S. P. Co.* 35.

REFRIGERATOR CARS.

Refrigerator cars are in the main hauled west to California empty because of necessity to get them back as soon as possible for reloading. *In re Advances in Demurrage Charges*, 314 (318).

RESHIPPING. *See also TRANSIT PRIVILEGES; RECONSIGNMENT.*

It is the right of a shipper of wool to send his commodity on a reasonable rate to a Pacific coast terminal and to ship it from there by water to the eastern market. *Wool, Hides, and Pelts*, 185 (191).

tion, held that the sum of the local rates to and from the reshipping point was properly assessed. *Platten Produce Co. v. C. & N. W. Ry. Co.* 30 (31); *Talge Mahogany Co. v. S. Ry. Co.* 44 (45); *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43).

RESHIPPING RATES.

Discussed. In re Milling-in-transit Regulations, 90 (91).

RESTORATION OF RATE OR PRIVILEGE.

The fact that a transit privilege was in effect both before and after a shipment moved, in and of itself furnishes no basis for an award of reparation. *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43).

RETURN OF CARS.

It is not only the right but the duty of carriers to devise some method by which the prompt unloading of their equipment will be secured. *Galveston Commercial Assn. v. A. T. & S. F. Ry. Co.* 216 (222).

It is proper that carriers, as between themselves, should adopt reasonable regulations calculated to induce the prompt return of cars by foreign lines. *Wichita Board of Trade v. A. T. & S. F. Ry. Co.* 625 (631).

Question of reasonableness of time limit for return of cars from grain elevators, not passed upon. *Ryley v. W. R. R. Co.* 210 (211).

RETURNED SHIPMENTS.

Held that the returned shipment rate applicable to empty beer packages in southern classification applies only from and to the points between which the original shipment moved. *Portner Brewing Co. v. S. Ry. Co.* 659.

Return of car fittings. *Western Classification case*, 442 (496).

REVENUE.

IN GENERAL.

The question of revenue should be kept separate from the question of classification. *Western Classification case*, 442 (453).

Differences in earnings of carriers in different territories considered in determining the propriety of rate comparisons. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150).

A violation of section 3 can not be predicated upon a difference in rates on non-competing articles, unless the rate on the favored article is so low as to be unremunerative. *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672.

The relative lack of financial prosperity of carriers, considered in determining the reasonableness of a rate. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (363).

The adequacy of the revenue for the service performed by the carriers must take precedence over market conditions in determining the reasonableness of a particular rate. *Lindsay Bros. v. P. M. R. R. Co.* 368 (369).

Remunerativeness of rate, considered. In re *Advances on Flaxseed*, 337 (339); In re *Advances on Hay*, 680 (684).

But slight loss of revenue would result in this case from compliance with the requirements of section 4. In re *Lumber Rates*, 50 (60).

CAR-MILE EARNINGS.

Car-mile earnings considered in determining the reasonableness of a rate. In re *Classification of Empty Barrels*, 641 (644); In re *Advances on Furniture*, 299 (302); In re *Advances on Hay*, 680 (683); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (674); *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (151); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245); In re *Advances on Hops*, 16 (17).

The principle that carriers are entitled to a somewhat higher revenue per ton per mile on short than on long hauls, is admitted by the complainant. *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (305).

Ton-per-mile earnings considered in determining the reasonableness of a rate. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150); *Holcker-Elberg Mfg. Co. v. C. R. I. & P. Ry. Co.* 212 (213); *Bartlesville Salvage Co. v. M. K. & T. Ry. Co.* 672 (673); *Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co.* 669 (671); *Norris v. St. L. & S. F. R. R. Co.* 416 (423); *In re Advances on Flaxseed*, 337 (340); *Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co.* 8 (9); *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22; *In re Advances on Potatoes*, 247 (248); *City of Crawford v. C. & N. W. Ry. Co.* 259 (263); *In re Advances on Hay*, 680 (684); *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648); *Taylor v. N. & W. Ry. Co.* 613 (615); *Switzer Lumber Co. v. K. C. S. Ry. Co.* 611 (612); *Ford Mfg. Co. v. I. C. R. R. Co.* 432 (433).

Ton-mile earnings discussed. *In re Advances on Drain Tile and Sewer Pipe*, 688 (694).

PROFIT.

Carriers, voluntarily furnishing storage in cars, are entitled to reasonable compensation beyond the cost of service. *In re Demurrage Charges*, 314 (324).

A carrier, furnishing a transit service, is entitled to a profit over and above the cost of service. *Spiegle v. S. Ry. Co.* 71 (76).

Net earnings on heater cars in this case held not to be a just return upon the value of those cars. *In re Advances on Potatoes*, 159 (165).

RISK. *See also* PACKING.

It is the duty of carriers to protect other freight from commodities which are likely to damage it. *Western Classification case*, 442 (444).

That certain perishable freight should at times be refused for sufficient reason—as, because of risk—seems reasonable, but the Commission is not convinced of the reasonableness of refusing to receive green hides when carriers have the right, under tariff provisions, to delay shipment for suitable equipment. *Western Classification case*, 442 (478).

Argument made that one-half of the rate on dynamite is for the transportation service and the other half for risk or insurance. *Dupont de Nemours Powder Co. v. C. R. R. Co. of New Jersey*, 19 (20).

Damage claims are not shown to be such as to materially influence the rate. *In re Advances on Drain Tile and Sewer Pipe*, 688 (693).

Risk considered in determining reasonableness of rates. *Norris v. St. L. & S. F. R. R. Co.* 416 (423); *In re Advances on Flaxseed*, 337 (340); *Western Classification case*, 442 (473); *Bagley & Co. v. P. M. R. R. Co.* 698 (699).

ROUTES.

A rate via one route is not shown to be unreasonable by the mere fact that there is a lower rate via another route. *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438).

Rate via one route found unreasonable to the extent that it exceeded the rate via another. *Ball Lumber Co. v. T. & P. Ry. Co.* 437 (438).

Routes in either direction, as justification for a deviation from rule of section 4. *In re Lumber Rates*, 50 (56).

SATISFACTION OF COMPLAINT.

Where a complaint has been satisfied, an order requiring a continuance of present nondiscriminatory practices not necessary. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (141).

the benefit of joint rates can not be sustained where the joint rates to the cities alleged to have been unduly preferred have been canceled. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (283).

Complaint against express companies satisfied and dismissed. *Anacostia Citizens' Asso. v. B. & O. R. R. Co.* 411.

SEASON RATES.

Different rates on copper from upper peninsula of Michigan to Detroit and New York at different seasons, owing to the opening and closing of navigation. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (359).

SHIPPER'S LOAD AND COUNT.

As the question of "shipper's load and count" is covered by pending legislation of Congress, fixing the liability of carriers, the Commission at this time does not make any recommendations in regard to this matter. *Western Classification case*, 442 (492).

SLEEPING-CAR COMPANIES.

Complainant's prayer for the restoration of the sleeping-car service formerly maintained by defendants between Guthrie, Okla., and Canadian, Tex., dismissed. Question of jurisdiction not decided. *Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co.* 120 (122).

Arrangement between sleeping-car companies and railroad companies as to use of the former's cars and the compensation therefor. *Corporation Commission of Oklahoma v. A. T. & S. F. Ry. Co.* 120 (121).

SOUTHWESTERN TERRITORY.

Described. In re *Advances on Knitting-factory Products*, 634 (636).

SPECIAL RATES.

Special rates on furniture. In re *Advances on Furniture*, 290 (301).

Special rates for Government transportation. *United States v. S. P. Co.* 255.

SPECIAL SERVICE.

Heater car service. In re *Advances on Potatoes*, 159 (163).

Service of loading, furnishing material, and placing dunnage in cars. *Western Classification case*, 442 (496).

Reconsignment privilege. *Detroit Reconsigning case*, 392 (394).

Storage and handling of carload freight. *Western Classification case*, 442 (488).

Transit service. *Spiegle v. S. Ry. Co.* 71 (75).

STANDARD CAR.

Standard car for light and bulky articles. *Western Classification case*, 442 (479).

STATE COMMERCE. See also INTERSTATE COMMERCE.

The Commission has no jurisdiction over intrastate rates. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (647).

STATE FACTOR OF THROUGH RATE. See THROUGH RATES.

STATE RATES.

Where there is an interstate rate between two points in the same state, this rate, and not the state rate, is the proper rate to be used in making up a combination through rate, in the absence of a joint through rate. *Coffeyville Vitriified Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 101 (102).

STEAMSHIP AGENT.

The status and functions of the steamship agents herein are not clearly defined. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (218).

Liability of steamship agent for demurrage charges. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216.

While carload quantities should not be received in the carrier's freight houses, nevertheless when a carrier has actually stored and handled carload quantities it is entitled to fair compensation for the additional service. *Western Classification case*, 442 (488).

It is not unreasonable to require of the carrier to ascertain before receiving export cotton for transportation to Galveston whether it can be cared for at Galveston upon its receipt. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (224).

TRACK STORAGE.

A tariff providing for track-storage charges on freight for delivery from the cars "direct to drays" does not apply to freight delivered upon a platform. *Wilson Bros. v. D. L. & W. R. R. Co.* 11.

The Commission has approved track-storage charges assessed by carriers as a penalty in addition to the demurrage. *In re Advances in Demurrage Charges*, 314 (315).

Defendant has a hand derrick for unloading heavy freight not of sufficient capacity to unload all heavy freight received. Collection of track-storage charges on heavy freight which was delayed under such circumstances found unreasonable. Reparation awarded. *Benisch Bros. v. L. I. R. R. Co.* 439.

SUBSIDIES.

In awarding reparation on the ground that unreasonable rates were charged for the transportation of property for the Federal Government no account was taken of proper land-grant deductions, which may be determined between the parties as provided by law. *United States v. S. P. Co.* 255 (257).

SWITCHING. *See also* ADVANCING CHARGES.

SWITCHING SERVICE.

Rule of carrier that no cars would be received from connecting lines for switching unless all freight charges were prepaid not condemned. *Hollingshead & Blei Co. v. P. Co.* 38 (39).

While carriers frequently maintain the same rates to localities located upon opposite banks of the Mississippi, the Missouri, and Ohio rivers, under the facts of this case it is held that on traffic from the east, South Sioux City is not entitled to Sioux City rates. *Edwards & Bradford Lumber Co. v. C. B. & Q. R. R. Co.* 93 (96).

The denial of free store-door pick-up and delivery to Anacostia, while such service is extended to other sections of the city of Washington, D. C., found to be discriminatory by the P. B. & W. R. R., but not by the B. & O. R. R. Co. *Anacostia Citizens' Asso. v. B. & O. R. R. Co.* 411.

Switching service considered as an element of expense of operating. *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (245).

SWITCHING CHARGES.

The average switching charge in this country is \$2 per car. *Spiegle v. S. Ry. Co.* 71 (75).

Switching charges incident to a transfer service at a diversion point held to have been properly assessed. *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43).

On coal in carloads to Rose Hill, Ill., the rate should not exceed the rate to Ravenwood, Ill., a point within the Chicago switching district, by more than 5 cents per net ton. Present adjustment held to be unduly discriminatory. *Gilmore & Co. v. C. & N. W. Ry. Co.* 403.

On a line haul a difference in distance of 1.41 miles between two points of destination is of no consequence, but in this case, where the delivering carrier performs only a terminal delivery service, such carrier is entitled to receive a reasonable charge for the additional movement. *Gilmore & Co. v. C. & N. W. Ry. Co.* 403 (405).

ABSORPTION OF CHARGES.

Rates on lumber in carloads from Council Bluffs, Iowa, to points west of the Missouri River, which are 1½ cents per 100 pounds higher than the rates from Omaha, Nebr., to the same points, not found unreasonable or discriminatory. Carriers not required to absorb bridge arbitrary between the two cities. *Hafer Lumber Co. v. C. & N. W. Ry. Co.* 27.

Carriers not required to absorb a bridge arbitrary on lumber from Council Bluffs to Omaha, notwithstanding the fact that such arbitrary is absorbed on all other articles except lumber. *Hafer Lumber Co. v. C. & N. W. Ry. Co.* 27.

Tariffs of the Santa Fe system not found to have provided for the absorption of switching charges at Hutchinson, Kans., on traffic milled in transit at that point. *Hutchinson Mill Co. v. A. T. & S. F. Ry. Co.* 180.

The export rate on lumber from Louisiana points to New Orleans includes the cost of switching to ship side. *National Lumber Exporters' Assn. v. K. C. S. Ry. Co.* 78 (84).

The failure of defendant carrier to absorb a charge of \$2 per car for switching lumber, held to be unjust where it was the practice of the carrier, both before and after the transaction in question, to absorb such charge. *Farrar Lumber Co. v. N. C. & St. L. Ry.* 22 (25).

Commission adheres to its former order that the absorption of bridge charges on traffic to Louisville, Ky., and the refusal to absorb such charge at New Albany, Ind., subjects New Albany to an undue prejudice. *Mfrs. & Merchants' Assn. v. A. & A. R. R. Co.* 116.

Absorption of charges mentioned or discussed. *Seaboard Refining Co. v. A. G. S. R. R. Co.* 702 (703); *Gilmore & Co. v. C. & N. W. Ry. Co.* 403 (404); in re *Advances on Flaxseed*, 337 (340).

TARE WEIGHT.

Referred to. In re *Advances on Hay*, 680 (683).

TARIFFS.

IN GENERAL.

Tariffs are but forms of words, and the Commission, in the exercise of its power to administer the act, can look beyond the forms to what caused them and what they are intended to cause and do cause. In re *Advances on Manganese Ore*, 663 (668).

By preface to its Tariff Circular 15-A the Commission provided for the continuance in force as lawful tariffs those tariffs which were lawfully on file prior to May 1, 1907. *Conifer Lumber Co. v. L. & N. R. R. Co.* 272 (273).

CONSTRUCTION.

Tariff rules must have a reasonable interpretation. *Western Classification case*, 442 (491).

Held, that a baggage rule governing the transportation of corpses should be read in connection with the tariff provisions relating to the right to occupy compartments on a certain train. *Johnson v. A. T. & S. F. Ry. Co.* 207 (209).

Although a rule may appear to be unlimited in its application when taken by itself, the general character of the tariff in which it is found must be taken into consideration. *Hutchinson Mill Co. v. A. T. & S. F. Ry. Co.* 180 (181).

TERMINAL EXPENSE.

Terminal expenses incident to delay in unloading hay and releasing equipment at Chicago can not properly be charged against each shipment and should not be included in the line rate. In re *Advances on Hay*, 680 (682).

consideration should be given the demands upon the terminal properties. *Western Classification case*, 442 (608).

TERMINAL SERVICE.

Discussed. In re *Advances on Manganese Ore*, 663 (667).

THROUGH RATES.

IN GENERAL.

In the absence of a reconsignment privilege applicable to the shipment in question, held that the sum of the local rates to and from the reshipping point was properly assessed. *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43); *Platten Produce Co. v. C. & N. W. Ry. Co.* 30 (31); *Talge Mahogany Co. v. S. Ry. Co.* 44 (45).

COMBINATION RATES.

While through rates ought not in theory to be constructed by combination of locals, still in many parts of the country they have been so constructed. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (195).

This case is not to be understood as approving the present system of constructing rates between points east of the Missouri River and points in Kansas by full combination upon the Missouri River. In re *Advances in Class and Commodity Rates*, 401 (402).

Where the through rates and charges must necessarily be made up of the separately established rates and charges, because there is no joint tariff, the law requires that carriers subject to the act must publish and file such separately established rates and charges. *Eagle Pass Lumber Co. v. National Railways of Mexico*, 5 (7).

Where there is an interstate rate between points in the same state, such interstate rate, and not a lower state rate, is the proper rate to be used in making up a combination through rate on an interstate shipment in the absence of a joint rate. *Coffeyville Brick & Tile Co. v. St. L. & S. F. R. R. Co.* 101 (102).

Rates on lumber from southern yellow-pine producing points to points north of the Ohio River and east of the Mississippi River are constructed upon some Ohio River crossing. The rate to Cairo, the lowest, and rates to most of the territory north of the Ohio River were made by combination on Cairo. In re *Lumber Rates*, 50 (58).

On lumber shipments from points in Washington to points in Canada, held that the joint rates are not unreasonable; that the portions of the combination rates established by American carriers are not unjust or unreasonable; and that if discrimination exists it must be due to rates applicable only in Canadian territory, over which rates the Commission has no jurisdiction. *Fullerton Lumber & Shingle Co. v. B. B. & B. C. R. R. Co.* 376 (378).

Intrastate portion of combination through rate attacked as unreasonable. *Lebanon Commercial Club v. L. & N. R. R. Co.* 277; *Dupont de Nemours Powder Co. v. C. R. R. Co. of N. J.* 19; *Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co.* 8.

Factor of combination rate attacked as unreasonable. *Lindsay & Co. v. G. N. Ry. Co.* 424 (425); *Norris v. St. L. & S. F. R. R. Co.* 416 (424).

JOINT RATES.

Joint through rates of 80 cents subject to a carload minimum of 30,000 pounds, prescribed by the Commission for the transportation of apples from Espanola, N. Mex., to points in Arizona and California. *Thompson v. A. T. & S. F. Ry. Co.* 174.

The Commission has frequently held that the through charge should be less than the combination of intermediate rates. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (194).

Prayer for establishment of joint rates from Seattle, Wash., to Dawson, Yukon Territory, and to other points in Canadian territory, waived by complainant upon the establishment by defendants of a through route in connection with the complaining steamship line. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (137).

Joint through rate held unreasonable to the extent that it exceeds the combination of local rates. *Kessler & Co. v. L. & N. R. R. Co.* 397; *Arabol Mfg. Co. v. S. B. Ry. Co.* 429.

The fourth section forbids carriers to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the act. *Arabol Mfg. Co. v. S. B. Ry. Co.* 429 (430).

Where, between the same points via the same route, there are two rates—one a joint rate and the other a combination rate—the joint rate is the legal rate. *Arabol Mfg. Co. v. S. B. Ry. Co.* 429 (431).

Defendant required to establish and maintain joint rates with complainant lighterage company so long as it maintains such joint arrangements with competitors of complainant. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

Joint class rates prescribed by the Commission from Baker City, Oreg., to points on the Oregon Short Line, the combination rate being found unreasonable. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281.

A complaint alleging undue discrimination against a city in that it was deprived of the benefit of joint rates can not be sustained where the joint rates to the cities alleged to have been unduly preferred have been canceled. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (283).

Carrier held to be justified in canceling joint through rates and establishing higher combination rate. In re *Advances in Class and Commodity Rates*, 401 (402).

A joint rate on box lumber and box shooks prescribed by the Commission from Astoria, Oreg., to California and other points. *Multnomah Lumber & Box Co. v. S. P. Co.* 123 (129).

Commission has never held that a through rate which is equal to the sum of the intermediate local rates, is sufficient to call for a reduction. *Appalachia Lumber Co. v. L. & N. R. R. Co.* 193 (195).

THROUGH ROUTES.

The withdrawal of a concurrence resulted in the cancellation of a through route via a certain road, but the complainant still enjoyed several available routes. Complaint dismissed. *Standard Vitrified Brick Co. v. C. B. & Q. R. R. Co.* 669 (670).

Defendant required to establish and maintain through routes with complainant lighterage company. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

Since the filing of the original complaint an open through route has been established, no order is entered. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136 (141).

TICKETS.

CARETAKERS.

A caretaker of chickens, negligently permitted by a carrier to start on a journey free of charge, held to be entitled to reparation. *Ream v. S. P. Co.* 107 (111).

A passenger, accompanying a corpse, was properly compelled to purchase an additional half-fare ticket in order to be entitled to occupy a compartment. *Johnson v. A. T. & S. F. Ry. Co.* 207.

TICKETS—Continued.**LOST TICKET.**

Failure of carriers to provide in their tariffs for the redemption of a lost ticket of the punch-cancellation variety, held not to be unreasonable. *Hill v. P. R. R. Co.* 650.

TONNAGE.

Tonnage considered in determining the relation of rates. In re Advances on Flaxseed, 337 (341). *See also* Western Classification case, 442 (473).

TRACKAGE RIGHTS.

Mentioned. *Greenbaum Co. v. C. & O. Ry. Co.* 352 (353); In re Lumber rates, 50 (61).

TRADE ZONES. *See also* MARKETS; ADVANTAGES AND DISADVANTAGES.

Trade zones mentioned. *Southern Furniture Mfrs. Assn. v. S. Ry. Co.* 379 (386).

TRANSCONTINENTAL RATES.

Mentioned. In re Wool, Hides, and Pelts, 185 (191).

TRANSFER COMPANIES. *See also* ADVANCING CHARGES.

By an arrangement between a transfer company and the railroad entering Washington, D. C., a passenger may have his baggage checked directly to or from his Washington residence; the transfer company makes a charge. Anacostia is not given the service. *Anacostia Citizens Assn. v. B. & O. R. R. Co.* 411 (414).

While the transfer company herein involved is a common carrier, it is not a carrier by railroad, and is not subject to the act. *Anacostia Citizens Assn. v. B. & O. R. R. Co.*, 411 (414).

TRANSFER OF FREIGHT.

Rule providing that when necessary to transfer freight from broad to narrow gauge cars minimum carload weight will be as provided for standard-gauge cars, regardless of the number of narrow-gauge cars that may be necessary, not condemned. *Thompson v. A. T. & S. F. Ry. Co.* 174 (178).

TRANSFER SLIPS.

Discussed. *Seaboard Refining Co. v. A. G. S. R. R. Co.* 702 (703).

TRANSIT PRIVILEGES. *See also* ELEVATION.**IN GENERAL.**

Allegation that discrimination existed against complainant by denial of certain stoppage-in-transit privileges, not sustained. *Thompson v. A. T. & S. F. Ry. Co.* 174.

JURISDICTION OF COMMISSION.

A transit charge is a regulation or practice affecting the rate of which the Commission has jurisdiction. *National Wool Growers' case*, 23 I. C. C. 151, followed. *Spiegle v. S. Ry. Co.* 71 (73).

TRANSIT CHARGES.

In determining the reasonableness of a transit charge, the carrier is entitled to a fair profit over and above the actual cost of the additional service. *Spiegle v. S. Ry. Co.* 71 (76).

The advance of the milling-in-transit charge on lumber at Bristol, Tenn.-Va., to 2 cents per 100 pounds, found unreasonable and discriminatory. A charge of 1½ cents per 100 pounds fixed by the Commission as a reasonable charge for the future. *Bristol Door & Lumber Co. v. N. & W. Ry. Co.* 87 (89).

TRANSIT PRIVILEGES—Continued.**TRANSIT CHARGES—Continued.**

On cottonseed oil, refined in transit, the T. & P. Ry. Co., through error, refused to issue regular bill of lading, but issued a track receipt or switching ticket. Complainant was deprived of the joint through rate and was compelled to pay the combination rate plus a stop-over charge. Reparation awarded. *Seaboard Refining Co. v. A. G. S. R. R. Co.* 702.

TERRITORIAL LIMITS.

Tariff which is liberal to Milwaukee as a milling and grain handling point should be permitted to go into effect, notwithstanding the fact that such tariff limits the territory into which grain can be shipped from Milwaukee. In re Milling-in-transit Regulations, 90.

INSPECTION BUREAUS.

Prior report and order herein relating to transit inspection bureaus considered and definite conclusions announced. Transit case, 130.

PROPORTION OF INBOUND AND OUTBOUND MOVEMENTS.

Prior report and order herein relating to the ratio of the inbound and outbound movements considered and definite conclusions announced. Transit case, 130 (132).

REPORTS.

Prior report and order herein relating to reports of transit houses considered and definite conclusions announced. Transit case, 130 (131).

SUBSTITUTION OF TONNAGE.

Prior report and order herein and rule of carriers relating thereto, considered and definite conclusions announced. Transit case, 130 (132).

WEIGHT DEDUCTIONS.

Prior report and order herein relating to weight deductions considered and definite conclusions announced. Transit case, 130 (131).

The Commission has frequently ruled that the benefit of transit privileges can not be given retroactive effect. *Deeves Lumber Co. v. A. & V. Ry. Co.* 42 (43).

An order of the Commission relating to the policing of transit privileges was applicable to all tonnage upon which transit privileges were or are claimed on or after its date. Transit case, 130 (134).

TRANSPORTATION.

It is the duty of the railroad to transport freight to its destination and there deliver it to the consignee. In re Advances in Demurrage Charges, 314 (315).

The Commission rejects the theory that a railroad is a common carrier only for those who have been accustomed to patronize it. In re Mine Ratings, 286 (296).

TRANSPORTATION CONDITIONS.

Difference in transportation conditions in different territories considered in determining the propriety of rate comparisons. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (150).

Distinctions in, considered in determining the proper classification of articles. *Western Classification case*, 442 (474).

TRANSSHIPMENT.

Transshipment rate limited to traffic delivered to respondent by water lines with which it has no through rates. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388 (390).

Of export cotton at Galveston. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (230).

UNDERCHARGES.

Less than legal rates collected. *Arabol Mfg. Co. v. S. B. Ry. Co.* 429 (430); *Davidson Bros. v. L. & N. R. R. Co.* 103 (106); *Leach v. N. P. Ry. Co.* 275; *Lindsay & Co. v. G. N. Ry. Co.* 424 (425); *Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co.* 8 (10); *Moore v. D. & R. G. R. R. Co.* 1 (2); *Switzer Lumber Co. v. K. C. S. Ry. Co.* 611.

Carrier authorized to waive collection of undercharge. *Mixon-McClintock Co. v. St. L. I. M. & S. Ry. Co.* 8 (10).

USE.

The Commission has condemned the maintenance of dual rates on a commodity, dependent upon the use to which the article is put. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (647).

Rate on coke to Carondelet, not found unreasonable as compared with rates to Chicago, Ill., to which, in addition to the open rate, there was in effect a lower rate when the coke was for use in blast furnaces. *St. Louis Blast Furnace Co. v. V. Ry. Co.* 183.

In accordance with established law, classification properly may not be predicated upon the use to be made of an article. Use may, however, be considered as evidence of value. Value has a bearing upon rating in the classification. *Western Classification case*, 442 (445).

UTILIZATION OF EQUIPMENT.

In establishing a proper relation between the carload and less than carload ratings, among the factors to which consideration should be given are the relative cost of handling, the demands made upon the terminal properties of the carriers, and the utilization of equipment. *Western Classification case*, 442 (608).

VALUE OF ARTICLE.

Value has long been one of the established measures of a rate. Held, value justified a difference in rates between liquid sheep dip and liquid tree spray. *Bernheim & Co. v. O. R. R. & N. Co.* 156 (158).

The value of an article, not its use, is one of the determining factors in classification. *Western Classification case*, 442 (499).

Value of an article considered in determining the reasonableness of the rate applicable thereto. In *re Advances on Drain Tile and Sewer Pipe*, 688 (693); *Cahill Iron Works v. N. C. & St. L. Ry.* 252 (254); In *re Advances on Flaxseed*, 337 (341); *North Fork Cannel Coal Co. v. A. A. R. R. Co.* 241 (243); *Bagley & Co. v. P. M. R. R. Co.* 698 (699).

VALUE OF SERVICE.

The value of the service to the shipper is of little importance in determining the reasonableness of the transit charge in this case. *Spiegle v. S. Ry. Co.* 71 (74).

The adequacy of the revenue for the service performed by the carriers must take precedence over market conditions in determining the reasonableness of a rate. *Lindsay Bros. v. P. M. R. R. Co.* 368 (369).

Value of service considered in determining the proper classification of articles. *Western Classification case*, 442 (473).

VOLUME OF TRAFFIC.

Volume of traffic of respective sections of a city discussed in connection with charge of undue discrimination. *Anacostia Citizens Asso. v. B. & O. R. R. Co.* 411 (413).

Great volume of traffic considered in determining the obligation of defendant carriers to furnish protection against cold during the winter months. In *re Advances on Potatoes*, 159 (163).

That there has been little or no movement under a given rate alleged to have been established at a low figure in order to stimulate the movement of a given article is no justification for advancing such rate. In *re Advances on Potatoes*, 247 (248).

on Flaxseed, 337 (341).

Fact that carrier operates in a sparsely settled territory considered in determining reasonableness of rate. *Michigan Copper & Brass Co. v. D. S. S. & A. Ry. Co.* 357 (363).

Volume of traffic considered in determining the reasonableness of rates. *Western Classification case*, 442 (472).

VOLUNTARY RATE. See also REDUCTION IN RATES.

The presumption which attaches to a voluntary rate may be rebutted by other facts and circumstances of greater weight and importance. *Evens & Howard Fire Brick Co. v. St. L. I. M. & S. Ry. Co.* 141 (151).

WAGON HAUL.

Joint rates put into effect to compete for traffic hauled by wagons. *Baker Commercial Club v. O.-W. R. R. & N. Co.* 281 (282).

Referred to. *Lebanon Commercial Club v. L. & N. R. R. Co.* 277 (280).

WAREHOUSES.

It is the duty of a consignee to receive his freight within a reasonable time after its arrival at destination. Where he neglects to do so the liability of the railroad as a common carrier ceases and it becomes a warehouseman. But the railroad is under no legal liability to continue to discharge the duty of warehouseman and may insist that the freight shall be removed by the consignee. In *re Advances in Demurrage Charges*, 314 (315).

Upon complaint that the free time demurrage period at Galveston on export cotton was insufficient: Held, that it is the duty of the carriers to provide at this port adequate terminal facilities and to furnish an adequate number of cars. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (228).

Lease by shipper of carrier's warehouse adjoining latter's terminal tracks. *Wilson Bros. v. D. L. & W. R. R. Co.* 11.

WATER CARRIERS.

The Commission has no direct authority to require the issuing of through export bills of lading, since it has no jurisdiction over the water carriers. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (225).

Defendant rail carrier required to establish and maintain through routes and joint rates with complainant lighterage company. *Murray Lighterage & Transportation Co. v. D. & H. Co.* 388.

Complainant steamship company, seeking through routes from Seattle, Wash., to Dawson, Yukon territory, satisfied by defendants. *Humboldt S. S. Co. v. White Pass & Yukon Route*, 136.

The ocean rate varies frequently from day to day, depending upon the price of ocean freights; it is a matter of bargain and sale and may become the subject of contract. *Galveston Commercial Asso. v. A. T. & S. F. Ry. Co.* 216 (218).

WATER COMPETITION.

Water competition considered in determining reasonableness of rate. *Taylor v. N. & W. Ry. Co.* 613 (617); *Wharton Steel Co. v. D. L. & W. R. R. Co.* 303 (308); In *re Advances on Furniture*, 331.

Water competition held to create a dissimilarity of circumstances within the meaning of section 3. *Arkansas Fertilizer Co. v. St. L. I. M. & S. Ry. Co.* 645 (648).

Water competition held to justify a deviation from section 4. In *re Lumber Rates*, 50 (61).

Water competition found to have caused establishment of certain rates. In *re Advances on Flaxseed*, 337 (338); In *re Advances on Knitting-factory Products*, 634 (639).

WEIGHT. *See also* MINIMUM CARLOAD WEIGHT.

MEASURE OF RATE.

The weight of an article is to be considered in determining the proper classification thereof. *Western Classification case, 442 (472).*

• **ACTUAL WEIGHT.**

The application of higher aggregate charges upon a shipment of 3,200 pounds than upon a shipment of 4,000, held, in this case, to be unreasonable. *Wright & Co. v. V. R. R. Co. 214 (215).*

ERROR IN WEIGHING.

Allegation that charges were assessed on an erroneous weight not found to be sustained. *Hafer Lumber Co. v. C. & N. W. Ry. Co. 27 (29).*

ESTIMATED WEIGHT.

In instances where it is difficult to secure the actual weight of articles shipped, estimated weights per unit may be used in arriving at proper charges. *Western Classification case, 442 (532).*

• **POSTING TARIFFS.**

Charges held to have been properly assessed notwithstanding the fact that the tariff naming the rate and minimum weight was not posted. *Faribault Furniture Co. v. C. G. W. R. R. Co. 40.*

WHARVES. *See also* WAREHOUSES.

Wharf used by defendant at Skagway, Alaska, held to be an instrumentality of interstate commerce. *Humboldt S. S. Co. v. White Pass & Yukon Route, 136 (140).*

"WRAPPED."

Meaning of the term, discussed. *Western Classification case, 442 (575).*



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